September 27, 2004

Draft Environmental Impact Report for the Elmwood Residential and Commercial Development Project (SCH NO. 2003112102)

THE CITY OF MILPITAS

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DRAFT ENVIRONMENTAL IMPACT REPORT

for the

Elmwood Residential and Commercial Development Project

(SCH NO. 2003112102)

September 27, 2004

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GLOSSARY OF TERMS

ADT – Average daily traffic (ADT) is a standard measurement of traffic volume on a given roadway.

Affordable Housing – Dwelling units affordable to very low-, low- and/or moderate-income households. Affordable is defined by the federal and state government as housing that costs no more than 30% of gross monthly income for rent and mortgage payments. Very-low income is defined as household incomes less than 50% of the County median income; low-income is defined as 50 to 80 percent of the County median; moderate is defined as 80 to 120 percent of the County median income.

Association of Bay Area Governments (ABAG) – ABAG is a regional planning body.

Bay Area Air Quality Management District – Bay Area Air Quality Management District (BAAQMD) is the regional City that oversees air quality compliance

California Environmental Quality Act (CEQA) – State of California Environmental Quality Act is promulgated in the California Public Resources Code Sections 21000-21178.1 (CEQA). In 1970, the California legislature established CEQA to provide and maintain a high quality environment for the people of California. To achieve this objective, CEQA provides a system of checks and balances for land use development and management decisions in California.

California Environmental Quality Act Guidelines (CEQA Guidelines) – Pursuant to Section 21083 of the Public Resources Code (CEQA), the CEQA Guidelines are a series of regulations prescribed by the State of California Secretary for Resources. These regulations (or guidelines) establish step-by-step procedures that all California state and local agencies are required to follow in order to comply with the provisions of CEQA.

CDFG – The state of California Department of Fish and Game (CDFG) is the state agency responsible for implementing the California Fish and Game Code §§1600-1607.

CMP – The Congestion Management Program (CMP) was created statewide as a result of Proposition 111 and has been implemented locally by the Santa Clara Valley Transportation Authority (VTA). The CMP for Santa Clara County establishes traffic impact analysis procedures for individual development projects of potentially regional significance.

Environmental Impact Report (EIR) – Environmental Impact Report (EIR) is the environmental clearance document required to be prepared, pursuant to CEQA, for projects that may have a significant adverse impact on the environment.

Lead City - The City of Milpitas

Level of Service (LOS) – Level of service (LOS) is measurement of vehicular traffic congestion.

National Pollution Discharge Elimination System (NPDES) – National Pollution Discharge Elimination System (NPDES) is a federal program that regulates the discharge of pollutants into natural watercourses.

North San Jose Plan (NSJDP) – The North San Jose Plan (NSJDP) is a deficiency plan established by the City of San Jose for the CMP intersections in north San Jose.

Notice of Preparation (NOP) – Notice of Preparation (NOP) is the formal notice required under CEQA that informs concerned public agencies and other concerned persons that an EIR is being prepared on the project.

Project – Section 21065 of the Public Resources Code (CEQA) defines a project as an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

RWQCB – The Regional Water Quality Control Board (RWQCB) The Regional Water Quality Control Board (RWQCB) regulates activities in wetlands and other waters through §401 of the Clean Water Act.

Santa Clara Valley Transportation Authority (VTA) – Santa Clara Valley Transportation Authority (VTA) is an independent special district responsible for congestion management, countywide transportation planning, and bus and light rail operations in Santa Clara County. As the Congestion Management Agency (CMA) for the County, the VTA determines with input from the member agencies, State and Federal funding priorities for transportation improvements.

SWPPP – Stormwater Pollution Prevention Plan (SWPPP).

USFWS – United States Fish and Wildlife Service (USFWS) is the federal agency responsible for implementing federally species protection legislation.

PREFACE

This document is an Environmental Impact Report (EIR), prepared on behalf of the City of Milpitas (the City) in accordance with the statutes and guidelines of the California Environmental Quality Act (CEQA), commencing with Section 2100 of the Public Resources Code, as well as the City's requirements. The purpose of this DEIR is to evaluate the potential environmental consequences of the construction and operation of the Elmwood Residential and Commercial Development Project (the Project) on an approximatley 59 acre site (Project Site).

The Project Site is comprised of surplus lands of the County of Santa Clara that surround the Elmwood Correctional Facility, located east of Interstate 880 (I-880), south of Sylvia Avenue, on both sides of Abel Street, and north of Great Mall Parkway in the City of Milpitas.

The proposed Project consists of 683 residential units, approximately 180,000 square feet of auto sales uses, approximately 6.0 acres in public park area (including trails) and another 8.4 acres of open space, consisting of landscaping and private community recreation facilities on an approximatley 59acre site. Development of the Project will require an amendment to the Milpitas General Plan, Midtown Specific Plan, and Zoning Map, Tentative Map to subdivide the larger 126-gross acre site (which includes the 66.92-acre Elmwood Correctional Facility property and the 59 acre Project Site) and to subdivide 59 acre Project Site into development parcels a Planned Unit Development (PUD), Site and Architectural Approval, and a Use Permit for various exceptions to the Project, including but not limited to setbacks, parking, and private open space.

Pursuant to Section 15161 of the CEQA Guidelines, this DEIR is a "project EIR", which focuses primarily on the changes in the environment that would result from the development project. Specifically, the EIR focuses on those environmental factors that would be potentially affected by the Project, including: land use; traffic and circulation; air quality; noise; biological resources; geology and seismicity; flooding, drainage, and water quality; cultural resources; hazardous materials; aesthetics; utilities; and public services.

Through its analysis of these factors, this DEIR provides decision-makers and their staff, responsible agencies and the public with an objective assessment of the potential environmental impacts that could result, should the Project take place. This document also provides a forum for discussion where public agencies, private concerns, and the public may have an opportunity to comment on the proposed Project.

The EIR Process

In accordance with CEQA, the City of Milpitas is the lead public agency responsible for approving the Project. As such, the City distributed a Notice of Preparation (NOP) advising others that an EIR would be prepared and listing the issues to be studied. The purpose of the NOP was to solicit comments on the scope and content of the EIR. A copy of the NOP and distribution list is found in Appendix A of this document. Those receiving copies of the NOP had 30 days to respond; the review period was from November 19, 2003 to December 18, 2003.

This Draft Environmental Impact Report (DEIR) was prepared following the 30-day NOP response period. Once completed, the DEIR is circulated for a 45-day public review period, as mandated by law. Written comments on the DEIR are to be addressed to the City of Milpitas Planning Division, attention: Troy Fujimoto. 455 East Calaveras Boulevard, Milpitas, California 95035-5479. Responses to all written comments or questions on the DEIR that are received during the review period will be prepared and included in the Final Environmental Impact Report (FEIR). The City Council will review and consider the FEIR before arriving at a decision to approve, revise or reject the proposed Project.

Tiering

In accordance with Section 15152 of the CEQA Guidelines, the environmental analyses applied in this DEIR incorporate by reference the discussions regarding traffic and air quality contained in the City of Milpitas Midtown Specific Plan Environmental Impact Report (SCH# 2000092027) (certified January 2002). This process, known as "tiering" permits this DEIR to use analyses of general impacts contained in the Midtown Specific Plan EIR, in order to streamline regulatory procedures, exclude duplicative analysis of environmental effects already examined in the Specific Plan EIR, and to focus this DEIR solely on issues related to adoption and implementation of the Elmwood Residential and Commercial Development Project.

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1.0 SUMMARY

Following is a summary of the Environmental Impact Report (the "EIR") for the Elmwood Residential and Commercial Development Project. Copies of plans and documents related to the Project are available for review at the City of Milpitas Planning Division.

The character of the proposed Project, its identified significant environmental impacts, mitigation measures, and potential alternatives are summarized in this Section. The remaining sections of the EIR address the details of the issues outlined in this Section.

1.1 SUMMARY PROJECT DESCRIPTION

The Project proposes to develop 59 acres as follows:

Residential Component:

- 315 podium condos east of Abel Street, 110 of which will be available for-sale to qualified moderate-income households;
- 165 single family detached homes north of the Elmwood Correctional Facility;
- 203 townhomes north of the Elmwood Correctional Facility.

Commercial Component

- Approximately three auto dealerships, with an estimated 180,000 square feet of auto mall building area

Open Space Component

- Six acres of public park, including the Hetch Hetchy park/trail improvements , Elmwood Park and West Abel Street Public Park
- Two private park/recreation areas, including one within the proposed single family and one within the proposed podium condominiums.

To accomplish this development, the Project proposes amendments to the Milpitas General Plan, Midtown Specific Plan, and Zoning Map; a Planned Unit Development (PUD),

Subdivision Maps, Site and Architectural Approval, and a Use Permit for exceptions to development standards.

As proposed, the Project would amend the land use designation for the property north of Elmwood Correctional Facility from a General Plan designation of General Commercial and Parks/Recreation to Multifamily high density; and from a zoning designation of General Commercial and Parks and Open Space to R3 Multifamily high density. The Project will subdivide the entire approximately 126-gross acre Elmwood Correctional Facility property into two primary units:, 59 acres will comprise the Project Site, and the remaining 66.92 acres will encompass Elmwood Correctional Facility property.

Development of the Project will require the following approvals by the City of Milpitas:

- EIA (EA2003-7) – Environmental Impact Report.
- General Plan and Specific Plan Amendment (GP2003-1) – To amend the General Plan and Specific Plan Land Use Maps in that same area from General Commercial and Parks/Recreation to Multifamily High Density.
- Zone Change (ZC2003-2) – To rezone land north of Elmwood Correctional Facility from General Commercial and Parks and Open Space to R3 Multifamily high density.
- Major Tentative Map (MA2003-4) – To subdivide the Elmwood Correctional Facility from the commercial and residential site; and to create a separate parcel for the new public road that will extend north from Great Mall Parkway, and separate development parcels on the Project Site.
- Planned Unit Development (PD2003-1) for the residential portion north of the Elmwood Correctional Facility. (This requested entitlement may no longer be required, because this residential portion of the Project is expected to comply with the R-3 zone.)[1]
- S-Zone (SZ2003-6) – Site and Architectural Review for the residential uses.
- Use Permit (No. UP2003-26) – Used for various exceptions to the Project. Including but not limited to setbacks, parking, private open space.

Project entitlements that may be required through other public agencies include: encroachments permits from the San Francisco Public Utility Commission; encroachments permits from the Santa Clara Valley Water District (SCVWD); regulatory permits through United States Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG) and Regional Water Quality Control Board (RWQCD).

The Elmwood Correctional Facility is included only for the purposes of establishing a separate parcel for the facility. No development or improvements are proposed. For this reason, the terms "Project" and "Project Site" in this DEIR refer to the proposed residential

[1] Per communication from Troy Fujimoto, Project Planner, City of Milpitas, September 13, 2004.

and commercial development and the related 59.1 acres site. The Elmwood Correctional Facility will be discussed only as relevant to a particular analysis.

1.2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

The following table summarizes the impacts and mitigation measures discussed in detail in Section 4.0. Potential environmental impacts of the Project are summarized in the left column of the table. The mitigation measures necessary for alleviating the impacts due to implementation of the Project are summarized in the second column of the table. The third column summarizes the status of the impacts after the implementation of the mitigation measures.

POTENTIAL SIGNIFICANT IMPACTS	***MITIGATION MEASURES***	***STATUS AFTER MITIGATION***
LAND USE (See Section 5.1)		
The Project proposes to develop surplus County land, consistent with policies of the Milpitas Midtown Specific Plan. It will be consistent with the general mix, character and intensity of land uses anticipated in the Specific Plan and City General Plan. The Project is not expected to conflict with applicable land use plans or policies, convert Prime Farmland to non-agricultural uses, or divide an established community.	The Project does not result in adverse impacts relative to land use or planning. No mitigation measures are necessary.	No significant unavoidable adverse impacts are expected relative to land use.
TRAFFIC AND CIRCULATION (See Section 5.2)		

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
The Project would result in significant adverse impacts to eight roadway intersections, two freeway segments, and cumulative impacts to one roadway segment.	TR-1: The intersection of South Main Street and Carlo Way is currently unsignalized. Prior to issuance of any building permit for the Project, the developer shall pay for a signal warrant analysis at this location. If the City Engineer determines that a signal is warranted then the developer shall pay a "fair share" cost towards the construction of the signal. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts. TR-2: The intersection of South Main Street and Corning Avenue is currently unsignalized.. Prior to issuance of any building permit for the Project, the developer pay for a signal warrant analysis at this location. If the City Engineer determines that a signal is warranted then the developer shall pay a "fair share" cost towards the construction of the signal. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts. TR- 3. The city has set up a traffic mitigation fee within the Midtown Specific Plan area to fund improvements that are not feasible for individual projects. Prior to issuance of any building permit for the Project, the developer shall pay to the City its "fair share" of these fees. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts. TR-4. The City of Milpitas and County of Santa Clara currently have plans to widen Montague Expressway between I-880 and I-680 to three mixed flow lanes and one 24-hour HOV lane in each direction. The segment between Great Mall Parkway and I-680 has recently been fully funded by the City of Milpitas and the County of Santa Clara. However, other portions of this improvement remain unfunded. Prior to issuance of any building permit for the Project, the developer shall pay to the City a "fair share" of the costs of widening Montague Expressway. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts. TR-5. The City of Milpitas is currently planning traffic improvements at the intersection of Calaveras Boulevard/Abel Street. Improvements to this intersection would decrease traffic delays on Calaveras Boulevard, which is a key east/west commute corridor in the city. Prior to issuance of any building permit for the Project, the developer shall pay to the City a "fair share" of the costs of these improvements. The "fair share" cost is to	Impacts at two of the intersections, South Main Street and Carlo Street and South Main Street and Corning Avenue, will be less than significant following mitigation. Impacts to the 6 remaining intersections and 2 freeway segments have not been fully mitigated. These impacts would be significant and unavoidable. The cumulative impact at Tasman Drive, McCarthy to I-880, westbound, AM, would be significant and unavoidable.

POTENTIAL SIGNIFICANT IMPACTS	***MITIGATION MEASURES***	***STATUS AFTER MITIGATION***
AIR QUALITY (See Section 5.3)		
The Project is expected to result in significant adverse air quality impacts relative to construction dust and cumulative impacts based on regional air pollutant levels.	**Construction Impacts** AQ-1: The developer shall implement the following basic control measures at all Project construction sites: ▪ Water all active construction areas ▪ Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard ▪ Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas ▪ Sweep daily ▪ Hydroseed or apply non-toxic soil stabilizers to inactive construction areas ▪ Enclose, water or apply non-toxic soil binders to exposed stockpiles ▪ Limit traffic speeds on unpaved roads to 15 miles per hour ▪ Install sandbags or other erosion control measures to prevent silt runoff to public roadways ▪ Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts. **Regional Operational Impacts** AQ-1: The developer shall implement the following measures, which have been identified by BAAQMD, to reduce vehicle emissions: Residential Development Measures: • Provide bicycle lanes, sidewalks and/or paths, connecting project residences to adjacent schools, parks, the nearest transit stop and nearby commercial areas. Provide a satellite tele-commute center within or near the development. • Provide secure and conveniently placed bicycle parking and storage facilities at parks and other facilities. • Implement feasible travel demand management (TDM) measures for a project of this type. This would include a ride-matching program, coordination with regional ride-sharing organizations, provision of transit information, and	Air quality impacts related to construction dust and regional air quality impacts related to vehicular emissions will remain significant and unavoidable.

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
	provision of shuttle service to major destinations. • Allow only natural gas fireplaces, pellet stoves or EPA-Certified wood-burning fireplaces or stoves in single-family houses. Conventional open-hearth fireplaces should not be permitted. EPA-Certified fireplaces and fireplace inserts are 75 percent effective in reducing emissions from this source. • Use electric lawn and garden equipment for landscaping. • Construct transit amenities such as bus turnouts/bus bulbs, benches, shelters, etc. • Provide direct, safe, attractive pedestrian access from project land uses to transit stops and adjacent development. • Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand. Commercial Development Measures: • The commercial portion of the project should be required to apply TSM measures to reduce trips. Appropriate strategies would be: • Provide physical improvements to commercial areas, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel. • Connect site with regional bikeway/pedestrian trail system. • Provide transit information kiosks. • Provide showers and lockers for employees bicycling or walking to work.	

POTENTIAL SIGNIFICANT IMPACTS	***MITIGATION MEASURES***	***STATUS AFTER MITIGATION***
	• Provide secure and conveniently located bicycle parking and storage for workers and patrons. • Provide electric vehicle charging facilities. • Provide preferential parking for Low Emission Vehicles (LEVs). • Specialty equipment (utility carts, forklifts, etc.) should be electrically, CNG or propane powered. • Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand.	

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
NOISE (See Section 5.4)		
Significant Project impacts relative to noise would include: ▪ Roadway noise would impact Project residents. ▪ Parking noise at the Correctional Facility would impact Project residents. ▪ Construction noise from the Project would impact adjacent residents.	**Roadway Noise** NOI-1: Prior to submittal of any building plans, the developer shall submit for review and approval of the City, a detailed analysis of noise exposure that identifies noise insulation features for units exposed to noise levels exceeding 60 dB DNL. The State of California Building Code (enforced by the City for all housing) requires that interior noise levels not exceed 45 dB DNL in all habitable rooms. In accordance with State Building Code requirements, the acoustical analysis shall indicate treatments necessary to maintain indoor noise levels at or below 45 dB L_{dn}. The developer shall incorporate these noise attenuation treatments as directed by the City. NOI-2: Residences with direct exposure to Interstate 880 and Abel Street shall be provided with adequate forced air mechanical ventilation so windows may be kept closed at the discretion of the occupants to control noise intrusion. The following is a list of areas that would require mechanical ventilation. ▪ Units at the west side of the lot north of the correctional facility . ▪ Units at the north and south sides of the lot north of the correctional facility that are less than 1,200 feet from the I-880. ▪ Units at the east side of the lot north of the correctional facility and less than 250 feet from the centerline of Abel Street that are exposed to noise generated by Abel Street. ▪ All units located at the lot east of Abel Street and adjoining the street. NOI-3: Prior to submittal of any building plans related to the commercial portion of the Project Site, the developer shall submit, for review and approval of the City, a noise attenuation plan to ensure compatibility of commercial uses with the adjacent residential development. Such controls may include, but are not limited to, noise barriers along the eastern property line north of the Hetch Hetchy right-of-way, site planning to minimize noise generating activities such as loading docks and repair facilities, etc. adjacent to the common residential property boundary. Such controls shall be sufficient to attenuate noise generated on the commercial site to	Following mitigation, impacts would be less than significant.

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
	less than 60 dB DNL at the adjoining residential site boundary. **Parking Noise** NOI-4: The developer shall construct a 6 foot high solid noise barrier fence along the northern Project Site boundary where it adjoins single-family residences. Such a noise barrier fence could be constructed of wood if air-tight with no cracks or gaps, or concrete panels, or concrete or masonry block. The minimum surface weight for the barrier shall be three pounds per square foot. **Construction Noise** NOI-5: During construction, the developer shall implement the following measures to reduce construction noise: (a) Limit construction to the hours of 7:00 AM to 7:00 PM on weekdays, and 9:00 AM to 5:00 PM on Saturdays, with no noise-generating construction on Sundays or holidays. (b) Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment. (c) Utilize quiet models of air compressors and other stationary noise sources where the technology exists. (d) Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction Project area. (e) Prohibit unnecessary idling of internal combustion engine. (f) Designate a noise disturbance coordinator who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. Conspicuously	

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
	post a telephone number for the disturbance coordinator at the construction site.	
BIOLOGICAL RESOURES (See Section 5.5)		
Project development could result in potentially significant adverse impacts relative to the following species/resources: ▪ Special status plants: alkali milk-vetch, Contra Costa goldfields, Fragrant Fritillary, and Hairless Popcorn-flower due to disturbance or removal during construction activities; ▪ Special status fish species, from degradation of water quality due to discharge of soils and other materials into Penitencia Creek during construction. ▪ Nesting raptor and migratory birds due to tree removal; ▪ Burrowing owls due to site disturbance during construction activities; ▪ Degradation of Penitencia Creek associated with construction of two outfall structures, bank stabilization and dewatering structures; and conflicts with RWQCB provisions regarding disturbance of the detention/settling basin and isolated wetland.	**Special status Plant Species** BIO-1: Appropriately timed surveys shall be conducted by a qualified botanist according to protocols acceptable to USFWS and CDFG to determine the presence/absence of the four special status plant species (alkali milk-vetch, Contra Costa goldfields, Fragrant Fritillary, and Hairless Popcorn-flower). Surveys to detect the presence of special status plant species shall be conducted during the appropriate blooming period for each species. While only marginally suitable conditions exist for these species, surveys shall be conducted to ensure that they are absent from the site. If these surveys do not detect the presence of these or any other special status plant species, no further mitigation measures will be necessary. These plants can only be detected in the absence of disking, and any such survey shall be done prior to site disturbance. If special status plant species are detected, CDFG shall be contacted and appropriate protocols for relocating these plants shall be implemented. If identified, a rare plant mitigation and monitoring plan shall be developed to provide for the long-term protection of special status plant species believed present, per the above mitigation measure. The mitigation and monitoring plan for the plant species present would be prepared and, after review and approval by the City of Milpitas, the plan shall be implemented. The plan shall have provisions for either preservation in place or salvage of plant materials. The plan shall provide for the long-term persistence of a sustainable population of that plant species in the designated preserve area on the development property or on a similarly dedicated and preserved area in the general vicinity of the development. The plan shall contain funding and functional assurances for the maintenance and monitoring of the plants along with performance standards. The plan shall be implemented either before or concurrently with ground disturbing activities on the development property.	Following mitigation, impacts would be less than significant.

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
	The CDFG requires a 10-day notification period prior to any grading or earthworks that will affect a listed plant species. Therefore, prior to construction a survey and staking of the any rare plants on site would be required so that salvage of said plant material could be accomplished by CDFG. **Special Status Fish Species** BIO-2. Prepare a Stormwater Pollution Prevention Plan (SWPPP). This plan shall include provisions to minimize on-site and off-site impacts to biological resources resulting from project related runoff. Mitigation measures defined in the SWPPP shall include: ▪ The use of silt fencing, straw bales, sediment basins, and other measures to reduce the movement of construction-related sediments into Penitencia Creek and other sensitive habitats from the development property . ▪ The installation of grit and oil trap systems, which shall be maintained in perpetuity, to prevent non-point source pollutants from entering Penitencia Creek and other sensitive habitats. Equipment and layout of these systems shall be installed by professionals familiar with these systems to assure successful functioning during extreme storm events. ▪ Implementation of BMPs, compliance with the City of Milpitas Grading Ordinance and the installation of construction and silt fencing and/or fiber rolls will prevent the discharge of construction debris and soil into Penitencia Creek during site clearing, grading and construction. ▪ Additional mitigation measures may include dewatering the section of creek channel surrounding the work areas associated with outfall and bridge construction. The dewatering structure shall be constructed with hand placed sand bags or other CDFG approved material. **Trees** BIO-3: To avoid the nesting season of raptors, tree and shrub removal shall not take place between February 15 and	

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
	August 1, or as determined by CDFG on a case-by-case basis. Vegetation removal during the non-nesting season is recommended to ensure no nest establishment occurs in trees and shrubs scheduled for removal. If tree removal between February 15 and August 1 is required, a pre-construction survey shall be conducted no more than 30 days before the removal of any tree or shrub to identify the presence, or absence or raptor nests. If no nests are identified in trees to be removed during the pre-construction survey, no further mitigation is necessary. If nests are identified, CDFG shall be contacted and appropriate protocols for buffers initiated. If active nests are found within the trees in the development property, i.e. within eucalyptus, elm, redwood, or shrubs, CDFG requires a buffer area of 150 feet around the nest tree until juvenile raptors have fledged and are no longer dependant upon the tree for survival. If shrub vegetation removal is to occur between February 15 and August 1, a pre-construction survey for nesting migratory songbirds will be necessary to ensure that trees and shrubs are free of nesting birds. If songbird nests are found, a disturbance-free buffer shall be established around the nest tree or shrub and the nest shall be monitored until young birds have fledged. If this is not possible, the nest shall be monitored to determine when young birds are old enough to be taken from the nest and moved to an appropriate wildlife rehabilitation facility for hand-rearing. **Burrowing Owls** BIO-4: Prior to any discing for fire or weed control, a burrowing owl nesting/occupancy survey shall be completed on the development property. As established by the CDFG, burrowing owl surveys shall be conducted by walking suitable habitat on the entire property and (where possible) in areas within 150 meters (approximately 500 ft.) of the project impact zone. The 150-meter buffer zone is surveyed to identify burrows and owls outside of the project are which may be impacted by factors such as noise and vibration (heavy equipment, etc) during project construction. Pedestrian survey transects shall be spaced to allow for 100 percent visual coverage of the ground surface. The distance between transect center lines shall be no more than 30 meters (approximately 100 ft.) And shall	

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
	be reduced to account for differences in terrain, vegetation density, and ground surface visibility. If disking is to occur, all burrowing owl nests will be identified through the above survey process and a 250-foot radius established around the site where no disking will be conducted. Each burrowing owl nest site and associated escape burrows will be protected by the 250-foot buffer zone. BIO-5: At such time as the MA is approved, mitigation actions shall be carried out prior to the burrowing owl breeding season. Generally, burrowing owls breed between February 1 and August 31. A passive relocation program would therefore be initiated between November 1 and January 31. The development property shall be resurveyed prior to initiating mitigation actions to ensure that burrowing owls have not occupied new sites within the Project boundaries in the interim period between the initial surveys and the initiation of passive relocation mitigation measures. At a minimum, the following measures shall be implemented to minimize impacts to owls. (a) On-site passive relocation using one way doors shall be implemented to encourage owls to move from occupied burrows to alternate natural or artificial burrows that are beyond the project impact area. Relocation of owls shall only be implemented during the non-breeding season between November and January 31. (b) Because the project will result in the loss of all foraging habitat on the development property for burrowing owls, all of the owls on the development property shall be excluded by installing one-way doors in burrow entrances. One-way doors shall be left in place 48 hours in ensure that owls have left the burrow before excavation and back-filling of the burrow. Whenever possible, burrows shall be excavated using hand tools and back-filled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. (c) Because this project will reduce suitable foraging habitat on the development property below the threshold level of 6.5 acres per occupied burrow, as well as displacing owls from occupied	

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
	burrows, the habitat shall be replaced off-site. Suitable off-site mitigation habitat suitable for burrowing owl habitat has been approved by CDFG. The total acreage of land will be determined at the time of the passive relocation surveys conducted prior to the undertaking the passive relocation activity. Off-site mitigation would consist of a minimum of 52 acres or 6.5 acres of mitigation habitat per occupied burrow, whichever is greater at the time of the passive relocation survey. The total acreage of land for mitigation shall be placed in a conservation easement in perpetuity and managed to maintain suitable habitat. (d) Suitable burrowing owl habitat can be found in annual and perennial grassland, deserts, and scrublands characterized by low-growing vegetation. Suitable owl habitat may also include trees and shrubs if the canopy covers less than 30 percent of the ground surface. Burrows are the essential component of burrowing owl habitat: both natural and artificial burrows provide protection, shelter, and nests for burrowing owls. Burrowing owls typically use burrows made by fossorial mammals, such as ground squirrels or badgers, but also may use man-made structures such as cement culverts: cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement. (e) One alternate natural or artificial burrow shall be provided on the location of the off-site mitigation area for each burrow that will be excavated in the project impact area. The off-site mitigation area shall be monitored on an on-going basis (the time period over which this monitoring shall continue will be established once a specific off-site mitigation area has been agreed upon) to confirm owl use of alternate burrows. (f) Pre-construction surveys for burrowing owls would be necessary due to the presence of this species on the development Property. A pre-construction survey shall occur no more than 30-days prior to any ground disturbance activities to verify absence/presence of this species on the Property. It is recommended that an initial burrowing owl survey be performed during December and early January. If owls are discovered, passive relocation of the owls can take place prior to February 1st. If owls are discovered after February 1st, the owls must be left on	

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
	site and a 250-foot buffer established until September 1st. **Wetlands** BIO-6: The proposed project shall be designed and constructed to avoid impacts to the isolated wetland depression located along the western edge of the project site. If avoidance is not possible and the area would be affected during the construction of the project, then the applicant shall contact the RWQCB to determine if the isolated, shallow depressions meet the technical criteria for jurisdictional wetlands subject to regulation by the State. If the isolated depressions are under the jurisdiction of either the RWQCB, then the applicant shall apply for permits or authorizations as needed to construct the proposed project. The applicant shall comply with the conditions of any permits. Wetland mitigation requirements would be developed during the regulatory permitting process with the RWQCB. BIO-7**:** The applicant will apply for a nationwide permit from the U.S. Army Corps of Engineers for the fill of approximately 0.02 acre of regulated waters. A Streambed Alteration agreement permit will be obtained from the California Department of Fish and Game allowing the construction of the outfalls, bridge and associated erosion protection. A Regional Water Quality Control Board Section 401 Water Quality Certification and/or Waiver of Discharge Requirements will be obtained for discharges to Penitencia Creek, and the fill of 1.113 acres of isolated wetland and the detention/settling basin. An encroachment permit will be obtained from the Santa Clara Valley Water District.	
GEOLOGY (See Section 5.6)		
The Project could expose people to impacts relative to ground shaking, expansive soils and liquefaction.	GEO-1: Prior to approval of any final map or issuance of any grubbing, grading or demolition permit, the developer shall submit final geology and soils report(s) as directed by and to the satisfaction of the City. Development of the Project Site shall be accomplished in accordance with the City approved final geology and soils report(s).	Following mitigation, impacts would be less than significant.

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
FLOODING, DRAINAGE, WATER QUALITY (See Section 5.7)		
The Project proposes a series of design treatments and facility improvements that will minimize adverse Project impacts related to flooding, site drainage and water quality. Possible impacts could occur if these improvements are not are properly implemented.	**Flooding** HYD-1: Prior to approval of any final map or issuance of any grading, grubbing or demolition permit, the developer shall provide to the satisfaction of the City a final floodplain study, prepared by a qualified registered civil engineer. The study model shall account for all potential flooding sources/constraints affecting the Project. It shall demonstrate that all existing sheet flows through the proposed Project will be accommodated, and that adjacent floodplains will not be affected more than that allowed by FEMA. Development of the Project shall be accomplished in accordance with the City approved final floodplain study.HYD-2: All residential living areas will be designed to be a minimum of one foot above the final base flood elevation. HYD-3. The commercial structures will conform to the City of Milpitas requirements for commercial structures constructed within the floodplain. HYD-4. Prior to approval of any final map or issuance of any grading, grubbing or demolition permit, the developer shall provide to the satisfaction of the City a final design for the new bridge at Lower Penitencia Creek midway between the existing Sylvia Avenue and Elmwood north crossings, prepared by floodplain study, prepared by a qualified registered civil engineer. The new bridge shall be designed to pass the 1,200 cfs Lower Penitencia Creek flows without raising the calculated creek water surface more than 0.1 foot. The construction of the new bridge shall not disturb the creek flow line, nor will construction activities be within the mean high water area as defined by the Corps of Engineers. Development of the bridge shall be accomplished in accordance with the City approved final bridge design. **Site Drainage System** HYD-5. The Project shall be designed and developed in accordance with final drainage plans, approved by the City. The drainage plans are expected to utilize existing storm drainage facilities and outfalls. One new outfall shall be installed	Following mitigation, impacts would be less than significant.

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
	with this Project in order to direct storm water from the commercial area to Lower Penitencia Creek. This proposed outfall shall be located near the existing road immediately north of the Elmwood Correctional Facility or as otherwise approved by the City. Subject to City approval, an alternative to a new outfall could be to secure an easement from the commercial area through the Elmwood Correctional Facility and connect to an existing outfall approximately 850 feet south of the proposed outfall. HYD-6. All new public facilities shall conform to the City of Milpitas standard details. HYD-7. The design of storm water collection and conveyance systems shall minimize erosion and other potential problems for on-site and adjacent properties. HYD-8. On-site areas of impervious surfaces shall be minimized where possible to reduce runoff. HYD-9. The Project shall provide storm drain system signs or stenciling with language to discourage illegal dumping of unwanted materials into the catch basins and field inlets. HYD-10. Development of the commercial properties shall include on-site sediment and oil filtering devices for the pretreatment of the major paved areas. **Water Quality** HYD-11. The Project shall implement construction Best Management Practices (BMPs), as sanctioned by the City, to ensure that water quality is protected. Construction BMPs shall include, at a minimum, erosion control measures, sediment transfer reduction measures and dust control measures. In addition, the site developer shall retain a construction manager familiar with NPDES permit requirements to monitor construction	

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
	activities, as directed by the City. HYD-12. CC&Rs for all future residential development associated with the Project shall include requirements for the Homeowners' Association to implement the following measures: a) Within any common landscaping and open space areas, the following measures shall be implemented: ▪ Materials Use Controls, which include good housekeeping practices (storage, use and cleanup practices) when handling potentially harmful materials, such as cleaning materials, fertilizers, paint, and where possible using safer alternative products; ▪ Material Exposure Controls, which prevent and reduce pollutant discharge to storm water by minimizing the storage of hazardous materials (such as pesticides) onsite, storing materials in a designated area, installing secondary containment, conducting regular inspections, and training employees and subcontractors; ▪ Material Disposal and Recycling, which includes storm drain system signs and stenciling with language to discourage illegal dumping of unwanted materials. The Homeowners' Association shall notify Project residents of household hazardous waste and used oil recycling programs. b) Dumping of waste products (solid waste/liquid waste and yard trash) into storm drain systems, open space areas, and creeks is prohibited. c) Maintenance provisions for private street, parking lots and storm drain facilities shall control the movement of pollutants and removal of them from the pavement through catch basin cleaning, storm drain flushing, street sweeping, and by regularly removing illegally dumped material from the Project Site. d) Educational flyers and other materials	

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
	shall be supplied to the residential users to increase their understanding of water quality and best management practices. e) The CC&Rs of all residential projects shall be subject to City Community Development Director review and approval. HYD-13. The following provisions shall be incorporated as conditions of approval to all future development applications within in the commercial portions of the Project: a) Educational flyers and other materials shall be supplied to all commercial owners/tenants to increase their understanding of water quality and best management practices. b) The following measures shall be implemented within any private and/or common landscaping and open space areas: ▪ Materials Use Controls, which include good housekeeping practices (storage, use and cleanup) when handling potentially harmful materials, such as cleaning materials, fertilizers, paint, and where possible using safer alternative products; ▪ Material Exposure Controls, which prevent and reduce pollutant discharge to storm water by minimizing the storage of hazardous materials (such as pesticides) onsite, storing materials in a designated area, installing secondary containment, conducting regular inspections, and training employees and subcontractors; ▪ Material Disposal and Recycling, which includes storm drain system signs and stenciling with language to discourage illegal dumping of unwanted materials. e) The commercial uses shall include a prohibition on the dumping of waste products (solid waste/liquid waste and yard trash) into storm drain systems, open space areas, and creeks; f) The commercial operators shall be	

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
	responsible for private street, parking lot and storm drain maintenance activities. These activities control the movement of pollutants and removal of them from pavement through catch basin cleaning, storm drain flushing, street sweeping, and by regularly removing illegally dumped material from the Project Site. g) The commercial operators shall be responsible for the inspection, maintenance and repair of sediment and oil filtering devices for the pretreatment of the runoff from major paved areas.	
CULTURAL RESOURCES (See Section 5.8)		
There is potential for archaeological resources and burial sites to occur on the Project Site. Project development could result in significant adverse impacts to archaeological resources and interment sites.	CUL-1: Any future ground disturbing activities on the Project Site shall be monitored by a qualified archaeologist to ensure that the accidental discovery of significant archaeological materials and/or human remains is handled according to CEQA Guidelines § 15064.5 regarding discovery of archeological sites and burial sites, and Guidelines § 15126.4(b) identifying mitigation measures for impacts on historic and cultural resources. (Reference CEQA §§ 21083.2, 21084.1.) In the event that buried cultural remains are encountered, construction will be temporarily halted until a mitigation plan can be developed. In the event that human remains are encountered, the developer shall halt work in the immediate area and contact the Santa Clara County coroner and the City of Milpitas. The coroner will then contact the Native American Heritage Commission (NAHC) which will in turn contact the appropriate Most Likely Descendent (MLD). The MLD will then have the opportunity to make a recommendation for the respectful treatment of the Native American remains and related burial goods.	Following mitigation, impacts would be less than significant.
HAZARDS (See Section 5.9)		
There is potential for ACMs and lead-based paint to occur in the remaining golf facility structures on site, and potential that the two ground mounted electrical transformers may contain PCBs. These conditions create potentially significant impacts.	HAZ-1: Prior to issuance of any demolition permit, the developer shall demonstrate to the satisfaction of the City that the interiors of the existing golf facility structures have been assessed for ACMs, lead-based paint, and other potentially hazardous materials or waste. This assessment shall be conducted and attested to by a state registered or licensed professional with experience in these types of mitigations.	Following mitigation, impacts would be less than significant.

POTENTIAL SIGNIFICANT IMPACTS	*MITIGATION MEASURES*	*STATUS AFTER MITIGATION*
	Should any potentially hazardous materials be found, the developer shall be responsible for removal and disposal of these materials in accordance with applicable state and federal regulations. HAZ-2: Prior to issuance of any grading or demolition permit, the developer shall demonstrate to the satisfaction of the City that the two ground mounted electrical transformers and their surrounding soils have been tested for the presence of PCBs. This testing shall be conducted and attested to by a state registered or licensed professional with experience in this type of mitigation. Should any PCBs be found, the developer shall be responsible for removal and disposal of these materials in accordance with applicable state and federal regulations.	
AESTHETICS (See Section 5.10)		
No Project impacts relative to aesthetics are identified.	None required.	No impact.
PUBLIC UTILITIES (See Section 5.11)		
The Project is expected to exceed current City master-planned water and sewer capacity..	**Water** UTL-1. The developer shall design and install all water lines necessary to serve his development (including fire flow), sized in accordance with the City's Water Master Plan and guidelines. UTL-2. The developer shall purchase adequate public system water capacities for the respective development including costs for capacity and storage needs above the master plan capacities, as determined by the City. **Sanitary Sewer** UTL-3. The developer shall design and construct all sanitary sewers and appurtenances, necessary to serve his development, sized to provide the additional capacity requirements of the development, and in accordance with the City's Sewer Master Plan, and City Engineering Standards and Guidelines. UTL-4. The developer shall purchase adequate public system sewage capacities for the respective development. Fees shall consist of treatment plant fees up to the master plan levels, plus additional fees for	Following mitigation, impacts would be less than significant.

POTENTIAL SIGNIFICANT IMPACTS	MITIGATION MEASURES	STATUS AFTER MITIGATION
	costs of sewage collection, proportional replacement costs for a new Main sewage pump station and regional plant capacity needs above the master plan capacities, as determined by the City.	
PUBLIC SERVICES (See Section 5.12)		
By increasing the population of the Midtown area, the Project could result in demand for additional fire protection and police protection apparatus, and increased demand for maintenance of public park and landscaped areas.	PS-1: The developer shall contribute a fair share portion to cover the costs associated with fire, police and/or park/landscape maintenance needed to serve the Elmwood residential development. This fair share shall be determined by a study conducted by the City, and may require developer participation in a Lighting and Landscape District, Lighting and Storm Drain Districts, and/or Community Facility District.	Following mitigation, impacts would be less than significant.

1.3 SUMMARY OF ALTERNATIVES

Alternatives to the Project are found in Section 7.0. In accordance with Section 15126.6 of the CEQA Guidelines, acceptable alternatives could feasibly attain most of the basic Project objectives but would avoid or substantially lessen potential significant effects of the Project. Discussion of alternatives should allow meaningful evaluation, analysis and comparison of the alternatives with the proposed Project. Among the factors that may be taken into account when assessing the feasibility of alternatives are site suitability, General Plan consistency and economic viability. (In CEQA analyses, economic viability is assumed to include both market feasibility and adequate financial returns).

This Project involves the reuse of surplus lands of the County of Santa Clara that surround the Elmwood Correctional Facility. KB Home has entered into an agreement with the County to remove the surplus land from the Correctional Facility site and develop it for mixed uses. KB Home and the County of Santa Clara are joint applicants on the Project. They share the basic objective to develop the Project Site with community supporting and revenue generating land uses. Because the basic objective of the Project is development of the site, an alternative location scenario is not considered relevant, and is therefore not included in the alternatives analysis.

Consistent with CEQA Guidelines, two alternative to the Project are considered. These are:

1. No-Project Alternative:

Under the No-Project Alternative, no new development would occur on the Project Site. It would remain surplus land and part of the Elmwood Correctional Facility site. With no development, impacts related to the site's development would not occur. However, existing hazards on site associated with flood control deficiencies and toxic substances would remain. The No-Project Alternative would not comply with Midtown Specific Plan policies regarding development of the site. Finally, the No-Project alternative would not achieve the basic Project objective to develop the County surplus lands with community supportive and revenue generating land uses. This Alternative would not be superior to the Project.

2. Reduced Residential Density Alternative

Under the Reduced Residential Density Alternative, the entire 28.9 acre residential portion of the Project would be developed as single family attached dwellings with a medium-low density of 12 units per acre. This Alternative would result in approximately half as many residential units as the Project. By reducing the number of dwelling units roughly in half, the Reduced Density Alternative would result in about half the amount of residential traffic. This Alternative is expected to alleviate a significant and unavoidable impact associated with the Project (cumulative traffic increase on Tasman Drive). However, this Alternative would not meet the policies related to the provision of high density and affordable housing. As described below, the Reduced Density Alternative would be superior to the Project.

Environmentally Superior Alternative

Although the Reduced Density alternative does not meet the certain Specific Plan policies and Project objectives, it is by default identified as the Environmentally Superior Project, because it would avoid one of the Project's unavoidable impacts (cumulative traffic increase on Tasman Drive).

1.4 AREAS OF CONTROVERSY AND ISSUES TO BE RESOLVED

Section 15123(b)(2) of CEQA requires that the EIR Summary include a brief statement of areas of controversy and issues to be resolved. Correspondence received by agencies in response to the Project Initial Study and Notice of Preparation (NOP)[2] raised a number of issues. These issues include, but are not limited to the following: Project impacts to stormwater runoff and runoff quality, flooding, traffic, transit and bicycle facilities, air quality, hazardous materials, and utility infrastructure. Each of the issues is addressed under their respective topics within Section 5.0 of this EIR.

The analyses presented in Section 5.0 find that the Project will result in significant adverse impacts relative to the following environmental topics, discussed in detail in Section 5.0 of this DEIR:

1. Traffic: related to eight roadway intersections, two freeway segments, and cumulative impacts to one roadway segment.

2. Air Quality: related to construction dust and cumulative impacts based on regional air pollutant levels.

3. Noise: related to roadway noise impacts on Project residents; parking noise impacts at the Correctional Facility on Project residents; Project construction noise impacts on adjacent residents.

4. Biological Resources: related to special status plants; special status fish species; nesting raptor and migratory birds; burrowing owls; degradation of Penitencia Creek; disturbance of the detention/settling basin and isolated wetland.

5. Geology: related to ground shaking, expansive soils and liquefaction.

6. Flooding, Drainage, Water Quality: related to proper implementation of flood control, drainage and water quality control measures.

7. Cultural Resource: related to archaeological resources and burial sites.

[2] Copies of the NOP, accompanying Initial Study and distribution list are found in Appendix A of this document. The NOP review period was from August 21, 2002 to September 19, 2002.

8. Hazards: related to potential ACMs and lead-based paint; and PCBs in or near two ground mounted electrical transformers.

9. Public Utilities: related to water and sanitary sewer capacity.

10. Public Services: related to the delivery of public services, specifically, police, fire, parks maintenance.

For each of these identified significant adverse impacts, the EIR recommends mitigation that is expected to reduce impacts to less than significant levels, with the following exceptions. The Project would result in unmitigatible traffic impacts at six roadway intersections, two freeway segments, cumulative traffic impacts at one intersection. The Project also would result in unmitigatible air quality impacts related to construction dust and regional vehicular emissions. These impacts are significant and unavoidable. Should the City chose to approve the Project regardless of the unavoidable adverse impacts, Sections 15091 and 15093 of the CEQA Guidelines require that the City make written findings and adopt a Statement of Overriding Considerations.

2.0 INTRODUCTION

This Environmental Impact Report (EIR) examines the existing conditions and potential environmental impacts from development of the Elmwood Residential and Commercial Development Project to the Milpitas community and surrounding areas. Pursuant to Section 15161 of the State of California Environmental Quality Act Guidelines ("CEQA Guidelines"), this DEIR is a project-level EIR. As such, it focuses primarily on the changes in the environment that would result from development of the Project, including its construction and operation.

2.1 ENVIRONMENTAL IMPACT REPORT REQUIRED

The Elmwood Residential and Commercial Development involves the following activities:

1. Development of 683 residential units;
2. Development of approximately 180,000 square feet of auto sales uses;
3. Development of approximately 6.0 acres in public park area and another 8.4 acres of open space[L5], consisting of common landscaping and private community recreation facilities;
4. Subdivision of a larger approximately 126-gross acre site (which includes the 59 acre Project Site and the 66.92-acre Elmwood Correctional Facility property) to facilitate development of the residential, commercial and open space components, plus subdivision of the residential parcel;
5. Amendment to the City of Milpitas General Plan and Midtown Specific Plan Land Use Maps;
6. Amendment to the City of Milpitas Zoning Map;
7. Planned Unit Development (PUD);
8. Site and Architectural Approval;
9. Use Permit;
10. Tree Removal Permit(s);

11. Grading of the Project Site to accommodate the proposed development;
12. Construction and maintenance of access driveways internal streets, and sidewalks;
13. Construction and maintenance of drainage facilities and underground utilities (water, sewer, electrical, gas, cable).

Implementation of such a development is a "project" as defined by Section 21065 of the Public Resources Code (CEQA). A "project", pursuant to CEQA, is as an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

2.2 PURPOSE, INTENT, AND SCOPE

The purpose of this document is to identify, evaluate, and propose mitigation measures and alternatives to reduce Project impacts for any significant environmental impacts associated with the development of the proposed Elmwood Residential and Commercial Development Project. This document also seeks to solicit comments from public agencies, other organizations and the public at large. The EIR is intended for use as an informational document and neither makes any recommendations regarding the Project, nor authorizes any implementing actions by the City. Rather, the EIR is oriented toward providing decision-makers, their staff, other involved public agencies, interested organizations, and the general public with an objective and impartial assessment of the potential significant environmental impacts that could result from implementation of the Project.

In accordance with CEQA Guidelines[3], the level of detail in this DEIR corresponds to the level of detail provided in the Project proposal. This document evaluates the direct, indirect and cumulative impacts of the Project at a level of detail associated with the tentative tract map design and preliminary engineering provided for the proposed Elmwood Residential and Commercial Development Project.

The scope of issues addressed in this DEIR was determined through the Notice of Preparation (NOP). A formal NOP and Project Description were circulated to public agencies having a potential interest in the Project and neighboring property owners. Appendix A contains a copy of this notice, and a list of those to whom the documents were sent. Copies of all correspondence received in response to the NOP are contained in Appendix B. These NOP responses raised a number of potentially significant environmental factors that are addressed in the DEIR.

A public Scoping Meeting was conducted by the City on August 3, 2004, to inform the public agencies and the general public about the proposed Project and to solicit input regarding the potential significant Project effects to be analyzed in the EIR, including alternatives and mitigation measures. This meeting was conducted in compliance with Section 15083 of

[3] Section 15146 and 15146 (b) of the CEQA Guidelines.

the State of California Guidelines for Implementation of CEQA. No agency representatives or members of the public attended the Scoping Meeting.

Based on these issues identified through the NOP and Scoping processes, this DEIR encompasses the following environmental topics:

1. *Land Use:* The DEIR will describe the existing land uses on the site and in the surrounding area, and evaluate any potential land use conflicts resulting from implementation of the proposed Project. The EIR will describe potential constraints to the proposed residential and commercial development posed by the existing conditions in the area, including the Hetch-Hetchy pipeline easement and the site's proximity to the Elmwood Correctional Facility. The EIR will also identify potential land use impacts upon nearby land uses resulting from the Project. The EIR will also describe the Project's consistency with adopted plans and policies, including policies of the Midtown Specific Plan. Mitigation measures will be identified for significant land use impacts.

2. *Traffic and Circulation:* The traffic analysis prepared for the DEIR will identify the existing roadway conditions and other elements (light rail, bus routes, bike routes, etc.) of the transportation system in and around the site, including the local streets and intersections, regional facilities (such as expressways), and freeways. The traffic analysis will evaluate the impacts of the Project on the local and regional transportation system, following the guidelines of the City of Milpitas and the Congestion Management Program (CMP) of the Santa Clara Valley Transportation Authority (VTA). The DEIR will also evaluate parking, on-site circulation, bicycle and pedestrian access, and transit impacts. Mitigation measures will be identified for significant traffic, parking, on-site circulation, bicycle and pedestrian and transit impacts.

3. *Air Quality*: A detailed air quality analysis will be prepared to evaluate the air quality impacts of the Project. The DEIR will address the impacts of the Project upon long-term local and regional air quality and identify mitigation measures for significant impacts. Temporary construction related impacts such as construction vehicle exhaust and fugitive dust will also be discussed. Mitigation measures will be identified for significant air quality impacts.

4. *Noise*: The Project Site is subject to relatively high ambient noise levels from vehicular traffic on the adjacent I-880, Abel Street, and Great Mall Parkway. The DEIR will describe the existing noise environment at the Project Site, and will discuss the compatibility of the proposed residential uses with ambient noise levels. The DEIR will also evaluate the potential for Project traffic and construction to result in significant noise impacts. Noise levels will be evaluated for consistency with applicable standards and guidelines in the City of Milpitas. Mitigation measures will be identified for significant noise impacts.

5. *Biological Resources*: The Project Site is generally covered with ruderal (weedy) habitat and is known to contain several pairs of Burrowing Owls. There is also a

drainage ditch along the northern boundary of the site that leads to Penitencia Creek and a low area in the southern portion of the site that may be considered jurisdictional wetlands. Lastly, there are approximately 75-125 trees on the site, including over 50 American elm trees, called the O'Toole Elms that are considered an important local resource. The DEIR will evaluate the potential biological resources impacts of the Project, including impacts to sensitive plant and wildlife species that may be present. The DEIR will describe the condition of the O'Toole Elm trees and identify the impacts of the Project on the Elms, based upon a certified arborist's evaluation of the trees and proposed Project plans. Mitigation measures will be identified for significant impacts to biological resources.

6. *Geology and Seismicity:* Site soils have a high shrink/swell potential and the presence of historic creek channels in the Project area and unengineered fill may affect the proposed development. The entire valley floor of the City of Milpitas has been designated as a liquefaction zone by the Alquist Priolo Act/Map. The DEIR will describe these geologic conditions and potential impacts to the Project. Mitigation measures will be identified for significant geologic impacts.

7. *Flooding, Drainage, and Water Quality*: Flood Insurance Rate Map (FIRM) shows this site to be in Special Flood Zone AO. There is a large stormwater pond at the southwest corner of the site that receives storm runoff from the residential neighborhood southeast of I-880/Great Mall Parkway, as well as runoff from I-880 and possibly from the west end of the Project Site. There is also a drainage ditch along the northern boundary of the site, leading to Penitencia Creek from the abandoned golf course driving range. The DEIR will describe the existing conditions and proposed changes in site drainage and hydrological conditions resulting from the Project, including overflows resulting from upstream creeks, impact of a new bridge crossing Lower Penitencia Creek, and changes in floodplain. The DEIR will evaluate the increase in runoff resulting from development of the Project and identify any improvements required to drain the site. Mitigation for significant impacts will be discussed, as appropriate. Construction and operation of the Project may result in storm water runoff and surface water pollution from increases in oil and grease and heavy metals related to vehicle use and parking on the site. The DEIR will address the potential for increases in storm water pollution and identify mitigation measures for significant water quality impacts.

8. *Cultural Resources:* The Elmwood Correctional Facility has long been known as the location of an important archaeological site that was first recorded in the 1950's. The DEIR will discuss the potential for the Project to impact archaeological materials, based on a report of findings from backhoe testing over the 53.7-acre development site. Mitigation measures will be identified for significant impacts to cultural resources.

9. *Hazardous Materials*: The site was used primarily for agricultural purposes between at least 1939 and about 1970. Previous agricultural uses result in the potential for soil and/or groundwater contamination to exist from the use and storage of fertilizers, pesticides, and/or from leaking underground fuel tanks. The DEIR will

address the potential for hazardous materials contamination to be present on or near the site and impact the Project. Mitigation measures will be identified for significant hazardous materials impacts.

10. *Aesthetics:* The DEIR will describe the existing visual character of the Project area and the Projected change in visual character resulting from development of the Project. The DEIR will describe the Project's conformance with City of Milpitas General Plan and Midtown Specific Plan policies. The analysis will also discuss any relevant policy issues, and the visual consistency with both existing and any additional planned build-out of adjacent properties. Mitigation will be identified, as necessary, in terms of the City's landscaping, architecture, and design review standards.

11. *Utilities:* The DEIR will describe the existing and planned water, sanitary sewer, recycled water, solid waste, gas, electric, cable and telephone services to the Project area. The DEIR will address potential impacts to these services, specifically as they relate to infrastructure requirements, facilities, and capacity. The DEIR will describe the existing condition of water supply, evaluate the impacts of the proposed development, and recommend mitigation measures for significant impacts.

12. *Public Services:* The DEIR will address the availability of public facilities and service systems, and the potential for the Project to require the construction of new public facilities. This discussion will include a review of the effects on the provision of police and fire services, and the public school districts, libraries, and parks that would occur as a result of the Project. Mitigation measures will be identified, as warranted.

2.3 EFFECTS FOUND NOT TO BE SIGNIFICANT

Certain environmental topics relevant to CEQA were determined by the preliminary environmental assessment and confirmed through the NOP and Scoping process to be "not significant". A "not significant" impact is defined by CEQA as an adverse effect that is not substantial, an effect that is insignificant or an effect that is unlikely to occur. The "not significant" impacts are consequently not relevant to environmental impacts for the Project, and are not evaluated in this DEIR. Two issues were determined not be significant. These are:

- Mineral Resources: According to the City of Milpitas General Plan and input from City staff, there are no known or identified mineral resources on or adjacent to the Project Site.

- Population and Housing: The proposed Project is generally consistent with land uses and densities established in the General Plan and Milpitas Midtown Specific Plan, and associated regional policies. It would not induce substantial population growth in the community. The Project Site proposed for development is surplus County land and is

currently vacant. No displacement of substantial numbers of existing housing or people would occur as a result of the Project.

2.4 MITIGATION MONITORING PROGRAM

Pursuant to the Public Resources Code Section 21081.6, public agencies are required to establish monitoring programs to ensure that Project mitigation measures are adopted and implemented. A mitigation monitoring program, incorporating the mitigation measures set forth in this document, will be included with the Final EIR and adopted at the time of certification of the EIR.

2.5 PROJECT PROPONENT

The Project is proposed jointly by KB Home and the County of Santa Clara. Contact information for the Project proponents is as follows:

- KB Home: 6700 Koll Center Parkway, Suite 200
  Pleasanton, California 94566
  Contact: Ray Panek, Vice President, Forward Planning
  (925) 750-1700

- County of Santa Clara:
  Lawrence J. Klamecki
  Special Project Manager
  Office of the County Executive
  County of Santa Clara
  (408) 299-6413

2.6 PROJECT CONTACTS

The City of Milpitas is the lead agency in the preparation of this DEIR. GRC Redevelopment Consultants, Inc. is the environmental consultant to the City and has prepared this DEIR. Primary contact persons for this DEIR are as follows:

- Lead Agency: City of Milpitas,
  455 East Calaveras Boulevard
  Milpitas, California 95035-5479
  Contact: Troy Fujimoto, Project Planner
  (408) 586-3287
  e-mail:tfujimoto@ci.milpitas.ca.gov

- Environmental Consultant: GRC Redevelopment Consultants, Inc.
  701 S. Parker Street, Suite 7400 Orange, CA 92868
  Contact: Ernie Glover, Principal
  (714) 234-1122
  e-mail: eglover@grc-redevelopment.com

3.0 ENVIRONMENTAL SETTING

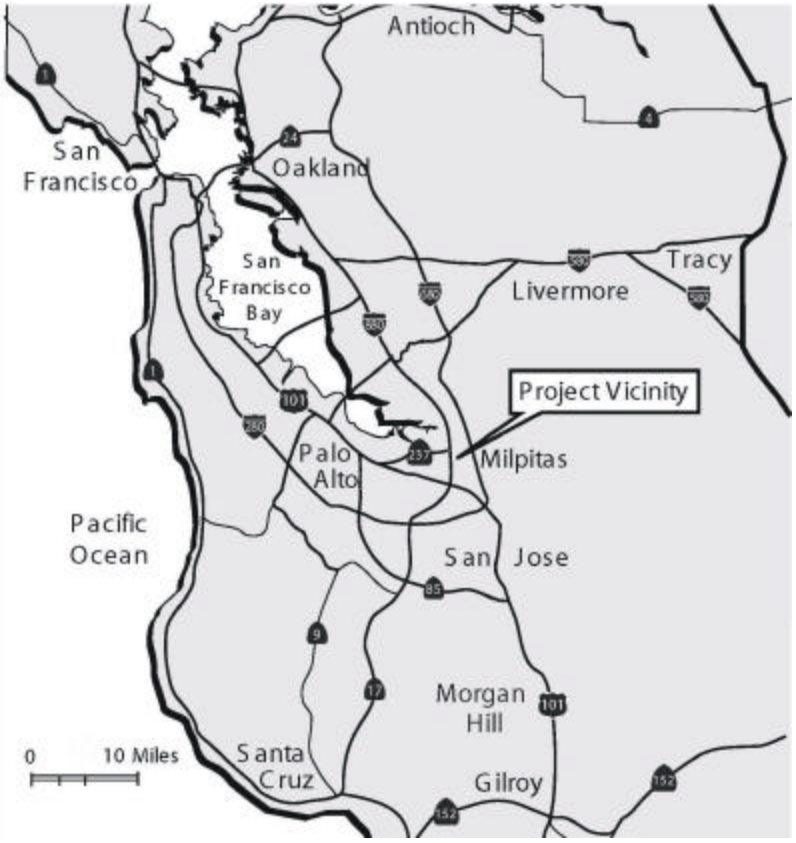
This Section explains the existing environmental setting for the Project in terms of: community context; local setting and surrounding areas; the site itself including existing land uses and land form; and other nearby proposed Projects that could cumulatively, with the Project, impact the environment.

3.1 COMMUNITY CONTEXT

Regionally, the Elmwood Residential and Commercial Development Project Site is located in the South San Francisco Bay Area or the "Silicon Valley" region. (Reference *Regional Location Map*, Figure 1.) Over the past 50 years, Silicon Valley has become the internationally recognized home of high technology innovation and research. It has grown from its original roots in Palo Alto to include an estimated 2 million people living and working in Santa Clara County and parts of adjacent counties.

Milpitas has grown as part of the Silicon Valley expansion. Since its incorporation in 1954, Milpitas, once a crossroad for agricultural trade, has a population of 62,698 persons, according to the 2000 Census. Along with the adjacent community of San Jose, Milpitas is projected to capture 67% of the region's job growth during the next 20 years.

Jurisdictionally, the Project Site, although currently owned by the County of Santa Clara, is located within the incorporated boundaries of the City of Milpitas, and is therefore under the jurisdiction of the City of Milpitas regulatory and policy documents.



Elmwood Residential & Commercial Development Project

LOCATION MAP

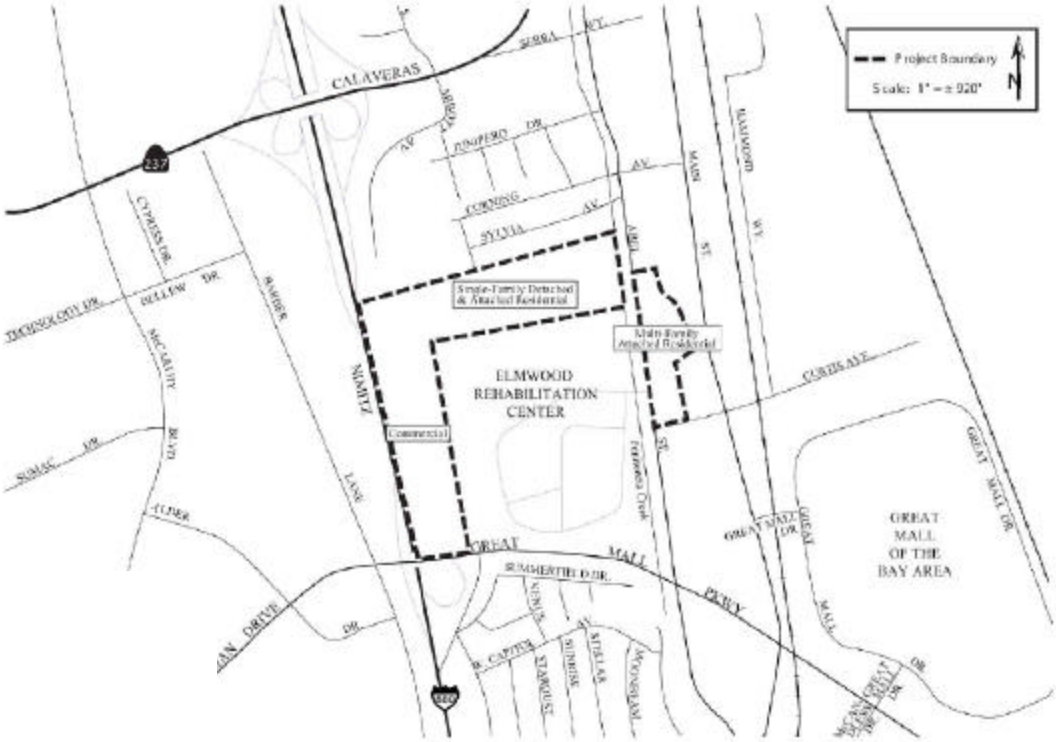
Date: Sep 25, 2004

Figure 1

3.2 PROJECT LOCATION

The Project proposes to locate in the City of Milpitas, in the County of Santa Clara. (Reference Figure 2, *Project Location Map*.)

The Project Site is comprised of surplus lands of the County of Santa Clara that surround the Elmwood Correctional Facility, located east of I-880, south of Sylvia Avenue, on both sides of Abel Street, and north of Great Mall Parkway in the City of Milpitas. Interstate 880 is located west of the site. An aerial photograph of the site and surrounding uses is shown on Figure 3, *Aerial Photo of Project Site and Surrounds*.



Elmwood Residential & Commercial Development Project

PROJECT LOCATION MAP

Date: Sep 23, 2004

Figure 2

Elmwood Residential & Commercial Development Project

AERIAL PHOTO OF SITE AND SURROUNDS

Date: Sep 23, 2004

Figure 3

3.3 EXISTING SITE CONDITIONS

Existing and Past Land Uses

The Project Site consists of two separated areas that surround the Elmwood Correction Facility on its west, north and east sides. West and north of the Correctional Facility is a 48.1-acre L-shaped portion of property that consists of recently disked fallow land and the former *Milpitas Family Golf* driving range. There is a drainage ditch along the northern boundary of the property, leading to Penitencia Creek from the abandoned driving range. Tall poles and netting and small structures are present on the westerly portion of the parcel. The man-made channel of Penitencia Creek runs along the west side of Abel Street. This portion of the site adjoins the Elmwood Correctional Facility to the south and east, Interstate 880 to the west, and commercial/industrial, single-family residential development to the north. (Reference Figure 4, *Photos of Project Site and Surrounds*.)

East of the Correctional Facility and separated by Abel Street is a 10.9-acre portion of the site. This portion is vacant and has been disked. The surface is disturbed and is covered with loose gravelly soil fill and sparse coverage of short grass. A double row of mature American Elm trees (the *O'Toole Elms*) extend between Abel Street and Main Street and divide the southerly end of from the northerly two-thirds of this parcel. The elms were planted in the 1870s by John O'Toole along the driveway to his 20-room Victorian mansion. A manhole and transformer pad are present at the northwest corner of the parcel.

Adjacent land uses to the eastern parcel include: the temporary Milpitas Senior Center and the underground Hetch-Hetchy Aqueduct; offices, a restaurant, other commercial uses, and the Milpitas Fire Training Facility and Fire Station #1 to the east; Curtis Avenue and multi-family residential development to the south; and Abel Street and the Elmwood Correctional Facility to the west.

Existing Land Use Policies

The Midtown Milpitas Specific Plan is the long-range land use and development plan for the 942-acre area that included the Project Site. The Specific Plan designates the majority of the northwest and west portion of the site as General Commercial and ten acres fronting Abel Street as Parks and Recreation. The Specific Plan also designates the Hetch-Hetchy aqueduct easement that crosses along the bottom of the north leg of the L-shaped parcel for Parks and Recreation use. (Reference Figure 6, *Existing Specific Plan Land Uses– Project Site.)* The Specific Plan identifies the portion of the site east of Abel Street for Multi-Family High Density and Multi-Family Very High Density Residential. These residential land use designations could provide a density of up 40 dwelling units/acre, which could accommodate a variety of housing types from row homes and townhouses to stacked flats with structured parking. The rows of O'Toole Elm trees that cross through the easterly parcel are designated for Parks and Recreation use.

Surrounding Land Uses

The Project Site consists of surplus County of Santa Clara lands that form an upside-down U-shape around the Elmwood Correctional Complex. The Elmwood Correctional Complex includes the Men's Correctional Facility and the Correctional Center for Women (CCW). The Elmwood Complex provides care, housing, and retention of minimum and medium security inmates. The Men's Correctional Facility houses approximately 2,600 inmates and the CCW houses approximately 500 inmates.[4] Abel Street runs north-south between the western and eastern portions of the site.

Adjacent to the western L-shaped portion of the site, surrounding land uses include commercial/industrial and single family residential uses to the north, the temporary Milpitas Senior Center to the north of the site on the east side of Abel. Directly northeast of the Project Site is a post office. (The Project proposes to It was assumed that the intersection of the Project Driveway (north)/Post Office Driveway and Abel Street would be signalized as part of the proposed project. Aside from this improvement, the roadway network under the project conditions was assumed to be the same as that of the background conditions.

East of this portion of the site is the Upper Penitencia Creek, commercial and public/quasi-public uses. The Correctional Complex is located south and east. To the south is the Great Mall Parkway, light rail line, and single family residential uses. To the west is I-880, a six lane freeway, and regional commercial uses (on the west side of I-880). Adjacent to the east parcel is Curtis Avenue to the south, and existing commercial/retail businesses to the east and north.

[4] County of Santa Clara. Department of Correction. 2003. Department of Correction. 26 January 2004. http://www.sccgov.org/content/0,4745,ccid%3D23770,00.html.

Biological Resources

No wetland habitats within the jurisdiction of either the United States Army Corps of Engineers or the California Department of Fish and Game (CDFG) occur on site. However, four California ground squirrel burrows, occupied by Burrowing Owls have been sited on the Project Site, and an additional four burrows were noted adjacent to the site, on the periphery of the Elmwood Correctional Center parking lot. The owls are protected under the Migratory Bird Treaty Act. Disturbance or removal of the owls requires a Mitigation Agreement through CDFG.

Cultural Resources

Elmwood Correctional Facility is a recorded archaeological site. There is potential that development of the Project Site could impact archaeological resources.

Development Constraints / Opportunities

In addition to the drainage ditch along the northern site boundary and the O'Toole Elms, potential development constraints on the westerly property include the Hetch-Hetchy aqueduct parcel, above which no buildings will be allowed. This property is controlled by the San Francisco Public Utility Commission (SFPUC) which plans to retain the parcel in fee, but will consider an encroachment permit to allow surface uses on the parcel. A parking lot and open space are acceptable uses, but a building is not.

The westerly property also lies within the 100-year flood zone. During a 100-year flood event, an existing set of box culverts along the site's southern edge would direct flood waters to the site.

Future residential development on the easterly site will need to address, at a minimum, interface issues with the adjacent senior center, commercial properties and fire station/training facility, including setbacks, lighting spillover from the adjacent uses, construction impacts and possible noise impacts to the proposed residential use from the fire station/training facility.

The Santa Clara Valley Transportation Authority (VTA) has recently finished a LRT extension from I-880 to Alum Rock Avenue. This extension will link Milpitas to downtown San Jose and to Mountain View via the Tasman East and Guadalupe LRT lines. The Tasman East LRT line includes a Great Mall/Main Street station, which is approximately one-quarter mile southeast of the Project site. The BART extension from Fremont to San Jose will pass through Milpitas along the Union Pacific Corridor, and will also have a station southeast of the site, near the intersection of Capitol Avenue and Montague Expressway. The Project Site's proximity to this future line is an opportunity that will enhance the transit orientation of the proposed Project.

Other Development Proposals in the Vicinity of the Project Site

According to the City of Milpitas Planning Division, there are a number of development proposals in the vicinity of the Project Site. Developments that have been recently approved or have active applications before the City include the following:

- Apton Plaza: 230 N. Main Street – 96 residential units and 3,000 s.f. of retail
- Town Center: N.E. corner of Milpitas and Calaveras Boulevard – 65 townhomes and redevelopment of approx. 75,000 s.f. of retail
- South Main Manor: East side of Main and Serra Street – 13 residential units
- Parc Place: 95 E. Curtis Avenue – 275 residential units
- USA Properties: N.E. corner of Montague and Main – 120 senior housing units and 120 residential units
- Calaveras Center: 750 E. Calaveras Blvd – 16,000 s.f. of office and restaurant
- 790 E. Capitol Avenue: 790 E. Capitol Avenue – 13,000 s.f. of office and retail.

Because of their proximity to the Project Site, these projects could, together with the Project, cause cumulative environmental impacts. “Cumulative impacts” refers to two or more individual effects that, when considered together, compound or increase other environmental impacts.

Elmwood Residential & Commercial Development Project

PHOTOS OF PROJECT SITE & SURROUNDS

Date: Sep 28, 2004

Figure 4

4.0 PROJECT DESCRIPTION

This Section describes the general features of the Project, including: objectives, characteristics (size and components), discretionary actions required, and schedule.

4.1 PROJECT OBJECTIVES

The objective of the Project is to create variety of housing types on a currently vacant and underutilized site within the Midtown area, in conformance with the City of Milpitas' General Plan land use goals and policies. Other objectives for the Project are to create a high quality, urban housing development that is within walking distance of public transit. The City's planning documents encourage new infill development that is compatible with adjacent uses.

As noted in Section 2.5, above, the Project is proposed jointly by KB Home and the County of Santa Clara. KB Home has entered into an Agreement for Purchase and Sale of Real Property (PSA) with the County of Santa Clara to develop the Project Site for community serving and revenue generating land uses. In addition, KB Home, the Milpitas Redevelopment Agency, the City of Milpitas, and the County of Santa Clara have entered into a Memorandum of Understanding to develop affordable housing on the Project Site.

Project objectives of KB Home are as follows:

- Develop a community using residential product types that KB Home has used effectively in other high density developments in the Bay Area, and takes advantage of nearby transit facilities
- Tailor the product types to fit the particular needs of the Milpitas marketplace and the City of Milpitas.
- Produce an attractive, high quality architectural product.

- Address the land use and development policies of the General Plan and Midtown Specific Plan.
- Provide affordable housing both at the Project Site and off-site locations.
- Create a safe, attractive and amenity-rich Project for future residents of the Project.
- Provide an appropriate and safe transition for the Project from the adjacent correctional facility use.
- Expand recreational opportunities both public and private for residents of the Project and citizens of Milpitas.
- Provide comprehensive environmental and Planning review of the entire Project site, including the auto sale uses proposed by the County.
- Design and develop the Able Street streetscape improvements consistent with the Midtown Specific Plan standards.

Project objectives of the County of Santa Clara are as follows:

- Develop an underutilized property to provide housing, employment and commercial opportunities in an environmentally, culturally, socially and economically appropriate manner.
- Provide affordable housing opportunities to those families in the County who would otherwise have difficulty obtaining safe, secure and affordable homes.
- Further the economic development and housing goals of both the County and the City of Milpitas.
- Create an aesthetically pleasing, transit oriented, and environmentally friendly mixed use Project consistent with the Milpitas General Plan andMidtown Specific Plan, the County's affordable housing goals.

4.2 PROJECT COMPONENTS

The Project proposes amendments to the Milpitas General Plan, Midtown Specific Plan, and Zoning Map, a Planned Unit Development (PUD), Subdivision Maps, Site and Architectural Approval, and a Use Permit to cover multiple Project exceptions. The Project also includes subdivision of the entire approximately 126-gross acre site (including the 66.92-acre Elmwood Correctional Facility property); residential development proposed on approximately 28.9 acres of the site, comprised of 20.5 acres located north of the Elmwood Correctional Facility and 8.4-acres located east of Abel Street; and approximately 180,000 square feet of auto sales uses on the County's 23.5 acres fronting I-880.

Figure 5, *Proposed Project Site Plan,* depicts the planned arrangement of land uses on the site. Table 2, below, summarizes proposed Project land uses by acreage.

Table 2
Elmwood Residential and Commercial Development

Land Use	Acres	Percent of Site
Residential Lots *		
▪ Building Pads	**12.5**	**21%**
▪ Usable Private Open Space	**2.4**	**4%**
Commercial Parcels	**23.5**	**40%**
Public Parks/Trails	**6.0**	**10%**
Common Landscaped Open Space	**6.0**	**10%**
Streets	**6.5**	**11%**
Podium Parking, interior streets, fire lanes and sidewalks	**1.7**	**3%**
SCVWD Access Easement	**0.4**	**1%**
TOTALS	**59**	**100%**

* Note: Residential component, inclusive of building pads, private and common open space, streets and sidewalks, comprise approximately 28.9 acres, including 20.5 acres located north of the Elmwood Correctional Facility and 8.4-acres located[L10] east of Abel Street.

Residential Component

The residential component of the Project would comprise 28.9 acres, developed with up to 683 residential units. These units would be a mix of the following residential product types:

- 315 podium condos east of Abel Street
- 165 single family detached homes north of the Elmwood Correctional Facility
- 203 Townhomes north of the Elmwood Correctional Facility

Podium-style condominiums would consist of at grade parking, with two or three-story structure above. The proposed residential units range from approximately 880 square feet found in the podium condos to 2,600 square feet in size found in the proposed single family units.

The Project will make 110 of the proposed for-sale units available to moderate-income households, in conformance with a Memorandum of Understanding between KB Home, the Milpitas Redevelopment Agency, the City of Milpitas, and the County of Santa Clara. Additionally, the Project applicant will assist in funding the construction of an off-site 98-unit affordable senior housing project, for which at least 57 rental units will be available to persons of very low income and 41 units will be available to persons of either low or very-low income.

Commercial Component

Approximately 23.5 acres of the proposed Project Site is reserved for commercial uses. The commercial component is located along the site's western edge, between Highway 880 and the existing north-south entrance road to the Elmwood correctional facility. Although the ultimate configuration of parcels is currently unknown, the Project anticipates an auto mall in this location, consisting of approximately 3 auto dealerships. An estimated 180,000 square feet of auto mall building area would be developed to accommodate showrooms and auto repair facilities. Access would be provided from Elmwood's existing north-south and east-west access roads.

A portion of the 23.5 acre site lies within the Hetch Hetchy right-of-way. As noted above, uses along the right-of-way will be limited to parking. The County of Santa Clara, which will be responsible for overseeing the development of the commercial portion, plans to locate parking along the easement and plans to submit an encroachment permit application to permit the parking.

The commercial component also lies within the 100-year flood zone. Design of the proposed auto mall must allow for conveyance of flood waters from the Project's southern boundary to its northern boundary.

Open Space Component

The Project includes both private and public open space and park elements. It proposes 6 acres of public park and trails, 2.4 acres of private usable open space, and 6 acres of common landscaped open space. (Reference Table 1, Elmwood Residential and Commercial Development Land Use Summary.) In total, the Project would provide 14.4 acres of open space area.

Of the 6 acres of public park, approximately 3.9 acres would be located along the Hetch Hetchy right-of-way. The balance of the public park acreage would be the proposed West Abel Street Public Park and the Elmwood Park. In addition to the public parks, two private park/recreation areas are proposed as part of the Project. These public and private park facilities are described below:

- Hetch Hetchy Parcel East of Abel Street Open Space: An area of approximately 0.9 acres, presently owned by the San Francisco Public Utilities Commission will be leased by the City of Milpitas, and improved for recreational use. It is envisioned that this area will be landscaped and a trail constructed to allow pedestrian and bicycle movement from Abel Street to Main Street. This area is proposed for public use. The proposed uses and types of landscaping material are subject to the review and approval of the City of Milpitas and the San Francisco Public Utilities Commission.

- Hetch Hetchy Parcel West of Abel Street Open Space: An area of approximately 3.0 acres, presently owned by the San Francisco Public Utilities Commission will be leased by the City of Milpitas, and improved for recreational use. These uses may include half-court basketball courts, tennis courts, lawn area for play, picnic tables and a trail constructed to allow for pedestrians and bicycle use. A public parking area for approximately nine cars is proposed at the western end of the parcel. This area is proposed for public use. The proposed uses and types of landscaping material are subject to the review and approval of the City of Milpitas and the San Francisco Public Utilities Commission.

- West Abel Street Public Park: An area of approximately 0.5 acres immediately west of Abel Street and Penitencia Creek is proposed for use as a public park. Used within the park may include tot lots (play structure), picnic benches with trellis structures, turf area for informal play.

- Elm Grove Public Park: This park area will include a tot lot with shade area, benches, turf area for informal play. The historical elements of an existing (but dying) elm grove will be retained by replanting elms (or other acceptable trees) in a pattern representative to the existing trees. The replanted elm grove will extend across the existing tree pattern from Main Street to Abel Street.

- Single Family Detached/Townhome Private Recreational Area: This private park area will consist of a spa, swimming pool, community building (that will also house pool maintenance equipment), and a turf area for informal recreational activities. This recreational area is intended to serve residents of both the single family detached homes and the townhomes.

- Podium Private Recreational Area: This private park area will consist of a spa, swimming pool, community building (also house pool maintenance equipment), and a tot lot area. This recreational area is intended to serve residents of the three podium condominium buildings.

Project Access

The primary access to the residential development west of Abel Street will be via a new signalized driveway/private street off of Abel Street. Secondary access will be provided via Great Mall Parkway to a cul-de-sac end at the northwest corner of the site, which will also be connected to the Elmwood facility private road.

Access to the commercial portion of the site will be via Great Mall Parkway and via the Elmwood Correctional Facility private road along the northern boundary of the facility.

Access to the residential units east of Abel Street will be via two driveways on Abel Street and a driveway on Curtis Avenue.

Utilities and Infrastructure Improvements

Development of the Project will require construction of infrastructure necessary to serve the proposed development, extension of utility lines, and construction of utility facilities within the Project boundaries. The Project will include the construction of new sidewalks around the entire site, streetscape improvements, and landscaping per the City's requirements.

Elmwood Residential & Commercial Development Project

PROPOSED PROJECT SITE PLAN

Date: Sep 28, 2004

Figure 5

4.3 DISCRETIONARY ACTIONS REQUIRED

Development of the Project will require the following approvals by the City of Milpitas:

- EIA (EA2003-7) – Environmental Impact Report.
- General Plan and Specific Plan Amendment (GP2003-1) – To amend the General Plan and Specific Plan Land Use Maps in that same area from General Commercial and Parks/Recreation to Multifamily High Density.
- Zone Change (ZC2003-2) – To rezone land north of Elmwood Correctional Facility from General Commercial and Parks and Open Space to R3 Multifamily high density.
- Major Tentative Map (MA2003-4) – To subdivide the Elmwood Correctional Facility from the commercial and residential site; and to create a separate parcel for the new public road that will extend north from Great Mall Parkway, and separate development parcels on the Project Site.
- Planned Unit Development (PD2003-1) for the residential portion north of the Elmwood Correctional Facility. (This requested entitlement may no longer be required, because this residential portion of the Project is expected to comply with the R-3 zone.)[5]
- S-Zone (SZ2003-6) – Site and Architectural Review for the residential uses.
- Use Permit (No. UP2003-26) – Used for various exceptions to the Project. Including but not limited to setbacks, parking, private open space.

Project entitlements that may be required through other public agencies include: encroachments permits from the San Francisco Public Utility Commission; encroachments permits from the Santa Clara Valley Water District (SCVWD); regulatory permits through United States Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG) and Regional Water Quality Control Board (RWQCD).

4.4 PROJECT SCHEDULE

Construction of the Elmwood Residential and Commercial Development Project is estimated to take approximately 38 months from the start of excavation. The entire site will be graded, backbone infrastructure will be installed, and construction of one of the podium buildings will be started. The remainder of the on-site improvements for the townhouses and the row houses will be installed, and then construction of the detached units will be started. The greatest use of heavy machinery will be through the grading and major infrastructure installation, estimated to last approximately eight months. Project construction is anticipated to begin in January 2005.

[5] Per communication from Troy Fujimoto, Project Planner, City of Milpitas, September 13, 2004.

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5.0 EXISTING CONDITIONS, IMPACTS AND MITIGATION MEASURES

This Section describes the existing conditions, potential significant adverse impacts and mitigation measures of the Project. Specifically, this Section focuses on the following environmental factors: land use; traffic and circulation; air quality; noise; biological resources; geology and seismicity; flooding, drainage, and water quality; cultural resources; hazardous materials; aesthetics; utilities; and public services.

Each environmental factor is discussed separately under its own section. Each discussion begins with a description of the existing conditions of the Project Site relative to the specific environmental factor. This background information is critical to accurately assess the Project's impacts.

Next, the threshold of significance used to measure potential Project impacts is identified. Thresholds of significance are based on the CEQA Guidelines, information provided by the Project Initial Study (Appendix A), the City of Milpitas General Plan and other regulatory requirements as appropriate.

The potentially significant environmental impacts of constructing and operating the Elmwood Residential and Commercial Development Project are then discussed and evaluated against the threshold of significance. For each significant impact, appropriate mitigation measures are presented. Any significant impact that cannot be fully mitigated is identified and discussed.

5.1 LAND USE

This section describes existing land uses in and surrounding the Project Site, and addresses the related plans and policies governing the Project Site and surrounding areas. This section also examines if the Project could adversely affect the surrounding community or conflict with applicable land use plans. Any mitigation measures necessary to resolve impacts also are discussed.

5.1.1 EXISTING CONDITIONS

The Project Site is comprised of surplus lands of the County of Santa Clara that surround the Elmwood Correctional Facility. The Project is located east of Interstate 880 (I-880), south of Sylvia Avenue, on both sides of Abel Street, and north of Great Mall Parkway in the City of Milpitas. Currently, the site is part of a single approximately 126.-acre parcel, which consists of the 66.92 acre Correctional Facility and the approximately 59 acres of surplus land.

Existing Land Uses

The L-shaped, western portion of the Project Site consists of disked, fallow land and a former golf course driving range/miniature golf course. There is a drainage ditch along the northern boundary of the site, leading to Penitencia Creek from the abandoned golf course driving range. The man-made channel of Penitencia Creek runs along the west side of Abel Street. The eastern 9.64-acre portion of the site is undeveloped and has been disked. The O'Toole Elms, a double row of American Elms, run through the middle of the eastern portion of the Project Site and link Main Street and Abel Street.

Surrounding Land Uses

As discussed in Section 3.3 of the DEIR, above, the Project Site forms an upside-down U-shape around the Elmwood Correctional Facility. Encompassing 66.92-acres and housing approximately 3,100 inmates, the Elmwood Correctional Facility is the predominant land use around the Project Site. Other existing land uses in close proximity to the Project Site include: commercial/industrial, single family residential, and the temporary Milpitas Senior Center to the north; the Great Mall Parkway, light rail line, and single family residential uses to the south; I-880 and then regional commercial uses to the west; and commercial/retail businesses to the east.

Agricultural Land

According to the Santa Clara County Important Farmland 2002 map, the Project Site is designated as Prime Farmland, Urban and Built-up Land, and Other Land. The east corner of the Project Site, just east of I-880 and north of the Correctional Facility is designated as Prime Farmland. Prime Farmland is land with the best combination of physical and chemical characteristics able to sustain long term production of agricultural crops. This land must have been used for production of irrigated crops at some time during

the four years prior to the mapping date. It should be noted that this portion of the site was developed as a golf course driving range in 1994 and has not been used for agriculture since then. The Prime Farmland designation, therefore, is no longer relevant.

The land east of Abel Street is designated as Urban and Built-up Land. Urban and Built-up Land is residential land with a density of at least six units per ten-acre parcel, as well as land used for industrial and commercial purposes, golf courses, landfills, airports, sewage treatment, and water control structures. The remaining Project Site lands to the west and north of the Correctional Facility are designated as Other Land. Other Land is land that does not meet the criteria of any other category. Common examples include low-density rural developments, wetlands, dense brush and timberlands, gravel pits, and small water bodies.

Existing Plan and Zoning Designations

Midtown Milpitas Specific Plan

The Midtown Milpitas Specific Plan is a long-range land use and development plan for a 942-acre area in the City of Milpitas. The Specific Plan area encompasses land near the western limits of Milpitas, generally bounded by the Union Pacific Railroad lines on the east and north, Abel Street and the Elmwood Rehabilitation Center on the west, and the City limits to the south. The Project Site is located within Redevelopment Project Area #1 of the Midtown Specific Plan Area.

The Specific Plan designates the majority of the northwest and west portion of the site as General Commercial and ten acres fronting Abel Street as Parks and Recreation. The Specific Plan also designates the Hetch-Hetchy aqueduct easement that crosses along the bottom of the north leg of the L-shaped parcel for Parks and Recreation use. (Reference Figure 6, *Existing Specific Plan Land Uses – Project Site.)* The Specific Plan identifies the portion of the site east of Abel Street for Multi-Family High Density and Multi-Family Very High Density Residential. These residential land use designations could provide a density of up 40 dwelling units/acre, which could accommodate a variety of housing types from row homes and townhouses to stacked flats with structured parking. The rows of O'Toole Elm trees that cross through the easterly parcel are designated for Parks and Recreation use.

General Plan Designations

The General Plan land use designations for the Project Site are similar to the designations provided by the Specific Plan. The General Plan designations include General Commercial, Parks and Open Space, Multi-Family High Density and Multi-Family Very High Density. (Reference Figure 7, *Existing General Plan Land Uses – Project Site.)*

Zoning Designations

The City of Milpitas Zoning Map designations for the Project Site are similar to the designations provided by both the Specific Plan and General Plan. The Zoning Map designations include: C-2 General Commercial, POS-Public Open Space, and R3 Multifamily High Density.

5.1.2 THRESHOLDS OF SIGNIFICANCE

Project impacts relative to land use are considered significant based on CEQA Guidelines. These include the following criteria:

- Conflicts with applicable land use plans and policies.
- Conversion of Prime Farmland to non-agricultural use.
- Potential division of an established community.

5.1.3 PROJECT IMPACTS

The Project proposes to subdivide the approximately 126-acre County-owned site into numerous parcels. The existing Elmwood Correctional Facility property would encompass one 66.92-acre parcel. This parcel would remain a County owned correctional facility. No other changes to the Correctional Facility are proposed through the Project. The other remaining parcels would comprise the approximately 59 acre Project Site. (Reference Figure 8, *Proposed Project Parcelization by Use*.)

As discussed in Section 4.2 of the DEIR, the Project consists of the following components. (Reference Figure 8, *Project Land Use Map.)*:

Residential Component:
- 315 podium condos east of Abel Street, 110 of which will be available for-sale to qualified moderate-income households;
- 165 single family detached homes north of the Elmwood Correctional Facility;
- 203 Townhomes north of the Elmwood Correctional Facility.

Commercial Component
- Approximately 3 auto dealerships, with an estimated 180,000 square feet of auto mall building area

Open Space Component
- Six acres of public park, including the Hetch Hetchy park/trail improvements , Elmwood Park and West Abel Street Public Park

- Two private park/recreation areas, including one within the proposed single family and one within the proposed podium condominiums.

Conformance with the General Plan, Midtown Specific Plan and Zoning Ordinances

The Project proposes amendments to the land use maps of the Milpitas General Plan, Midtown Specific Plan and Milpitas Zoning Code. It would change the designation of the approximately 21.48 acre parcel north of the Correctional Facility and west of Abel Street from General Commercial and Parks and Recreation to Multifamily High Density Residential (12-20 du/ac). The proposed designation allows for new multifamily housing which is a minimum of 12 dwelling units per gross acre and a maximum of 20 units per gross acre, or up to 40 units per gross acre with special planned unit development (PUD) approval. This density range would accommodate a variety of housing types, ranging from row houses to triplexes and four-plexes, stacked townhouses and walk-up garden apartments. The Project proposes to change the zoning on the approximate 21.48 acre parcel north of the Correctional Facility from C2-General Commercial and POS-Public Open Space to R3-Multi-Family High Density. These proposed amendments would modify the proportion of residential to commercial uses on the site, but would not change the overall type, density or character of land uses anticipated by the Specific Plan.

The Milpitas Midtown Specific Plan is the City planning document that provides the most specific guidance relative to planning of the Project Site. It contains a series of policies directly relevant to the Project. Table 3 lists these relevant Specific Plan policies. For each policy, the Table then describes how the Project proposes to address these policies, and provides a determination as to whether the Project complies with the policy. As indicated in the Table, the Project would comply with Specific Plan policies.

Table 3

Project Compliance to Relevant Milpitas Midtown Specific Plan Land Use Policies

Policies	Proposed Project Response	Project Compliance
3.2 Provide for higher density residential development with the TOD (Transit Oriented Development) overlay zone and around Great Mall Parkway. 3.6 Affordable housing units should be provided with new housing developments.	3.2 response-The Project proposes affordable high density podium condos in the TOD. 3.6 response-The Project provides 110 units of affordable housing as part of the development, and a 98 affordable senior housing project off-site. 3.7 response-The Project provides 110 units of affordable housing as part of the development.	-Yes -Yes

3.7 Integrate affordable units within market-rate developments.	3.21 response-The Project will, designate 23.5 acres as general commercial consistent with the Specific Plan definition.	-Yes
3.21 Designate surplus land adjacent to the Elmwood Rehabilitation Center for general commercial uses.	3.23 response-The Project provides public parks and open space conceptually consistent with the Specific Plan.	-Yes
3.23 Require public parks and open space as conceptually located in the Specific Plan.	3.24 response- The Project provides 14.4 acres of public park, usable private open, and common open space area, which exceed the Specific Plan requirements (reference Section 5.12 of this DEIR.)	Yes
3.24 Require new residential development to provide public parks at a ration of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.	3.25 response-The Project proposes to improve the Hetch Hetchy right-of-way with a linear park and trail.	-Yes
3.25 Credit improved linear parks on property owned by public and quasi-public agencies (e.g. Santa Clara Valley Flood Control District) as public parks.	3.28 response- The Project proposes Elmwood Park, consisting of at least 2 acres and planting replacement trees to recall the O'Toole Elms.	-Yes
3.28 Establish a minimum 2-acre park in association with the O'Toole Elm alley.	3.29 response-The Project proposes to improve the Hetch Hetchy right-of-way with park and trail.	-Yes
3.29 Designate the Hetch Hetchy right-of-way in the Midtown Area park and recreation.	3.30 response-The Project proposes 14.4 acres of public park, usable private open, and common open space area, which complies with the intent of this policy.	-Yes
3.30 Encourage a 10-acre site to be developed as a park and recreation, located adjacent to Penitencia Creek.		-Yes

The Specific Plan is an implementation measure of the General Plan; and the Zoning Code that promulgates land uses consistent with both the Specific Plan and General Plan. By

proposing to amend each of these documents, the Project is expected to comply with all applicable land use plans and policies.

The City Planning Commission and subsequently the City Council will conduct public hearings to review the Project, including its proposed Specific Plan, General Plan and Zoning Map amendments. This review process is specifically designed by State law and City Municipal Code provisions to mitigate potential conflicts with applicable land use policies. Consequently, the Project does not conflict with adopted land use plans and policies.

Loss of Prime Agricultural Land

While the eastern corner of the Project Site is designated as Prime Farmland on the Santa Clara County Important Farmland 2002 map, it has not been used for the production of irrigated crops in over nine years; therefore, the designation for Prime Farmland is no longer relevant. This land is designated by the Specific Plan for commercial uses. The Project would develop this land as commercial in compliance with Specific Plan policies. Development of the proposed Project will not result in the loss of prime agricultural land.

Potential Division Of An Established Community

The Project Site is currently vacant surplus County land that is part of the Elmwood Correctional Facility. Existing residential land uses surround the Correctional Facility on its north, east and south sides. The Correctional Facility is not compatible with surrounding residential uses.

The Project proposes to remove the surplus lands from the Correctional Facility site, and develop it with residential, commercial and open space uses. It will provide a buffer between the surrounding uses and Correctional Facility.

Within the Project, the proposed Hetch Hetchy park, which is approximately 100 feet in width, will separate the proposed residential uses to the north from the Correctional Facility. Abel Street and Penitencia Creek, which combined are approximately 200 feet in width, will separate the proposed residential uses to the east from the Correctional Facility.

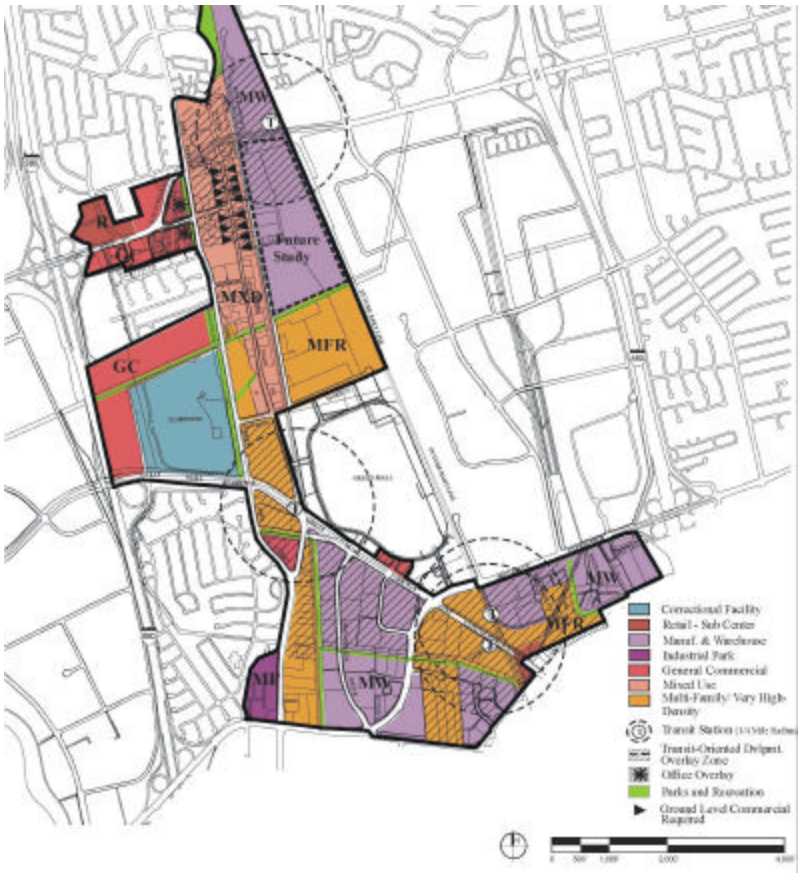
The Project is expected to have a beneficial impact on the surrounding community. It will tie together, rather than divide, the existing community.

5.1.4 MITIGATION MEASURES

The Project is not expected to adversely impact existing land uses or conflict with adopted land use plans. No mitigation measures are required.

5.1.5 SIGNIFICANCE AFTER MITIGATION

No significant adverse impacts relative to land use are expected to occur because of Project implementation.

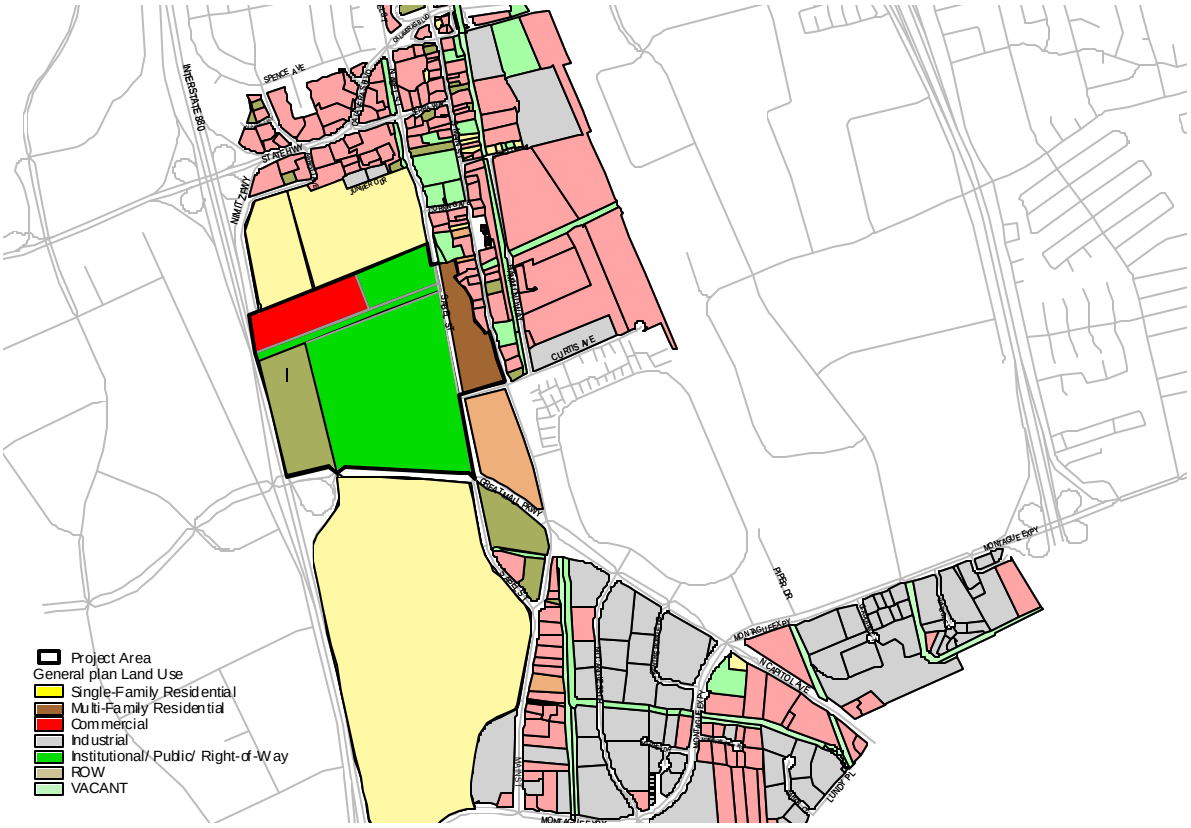


Elmwood Residential & Commercial Development Project

MIDTOWN SPECIFIC PLAN

Date:

Figure 6

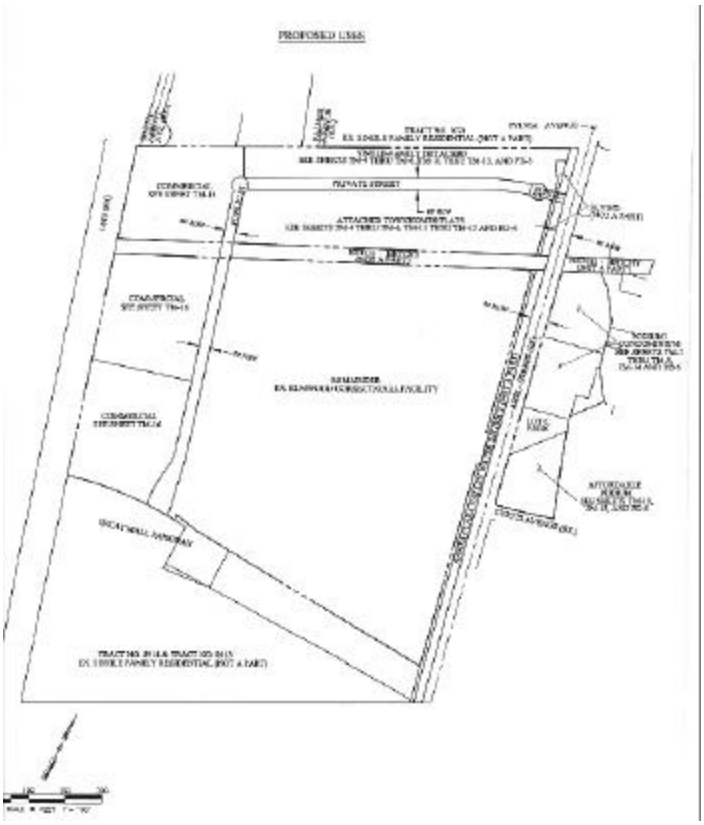


Elmwood Residential & Commercial Development Project

GENERAL PLAN LAND USE

Date: Sep 28, 2004

Figure 7



Elmwood Residential & Commercial Development Project

PROJECT LAND USE MAP

Date: Sep 23, 2004

Figure 8

5.2 TRAFFIC/CIRCULATION

This section of the EIR discusses existing vehicular traffic conditions in the vicinity of the Project Site, and summarizes the potential impacts to traffic flows from Project implementation. The adequacy of the Project's proposed internal circulation and parking is included in the assessment. This section also discusses parking, on-site circulation, bicycle and pedestrian access, and transit systems and possible impacts on these systems from Project development. Where appropriate, mitigation measures are identified.

Primary information for this section was obtained from the *Elmwood Residential & Commercial – Transportation Impact Analysis (Traffic Analysis),* prepared by Hexagon Transportation Consultants, Inc. in August 2004. A copy of the complete analysis is included as Appendix __ of this EIR. The purpose of the traffic analysis was to identify potential traffic impacts of the proposed Project, according to the standards and methodologies of the City of Milpitas, the City of San José, and the Santa Clara Valley Transportation Authority's (VTA) Congestion Management Program (CMP). This section also tiers from the traffic analysis in the Midtown Specific Plan EIR, is further detailed below.

5.2.1 EXISTING CONDITIONS

Roadway Network

Regional access to the Project is provided via Interstate 680 (I-680), I-880 and State Route 237 (SR 237). Direct access to the current site is provided via Great Mall Parkway and South Abel Street. Other major facilities in the vicinity include Montague Expressway and South Main Street. These facilities are described below.

- **I-680** is a north/south freeway traversing the eastern portion of Milpitas. This freeway connects the inland East Bay communities to the north with San Jose` to the south. I-680 has six mixed flow lanes north of SR 237 and eight mixed flow lanes south of SR 237. A northbound HOV lane is currently under construction on I-680 north of Calaveras Boulevard. A southbound HOV lane north of Calaveras Boulevard was recently completed.

- **I-880** is a north/south freeway providing regional access from East Bay cities to San Jose`, where it becomes SR 17. Within the City of Milpitas, I-880 is a six-lane freeway. South of Montague Expressway, I-880 has recently been widened to six lanes.

- **State Route 237/Calaveras Boulevard** is an east/west arterial between I-880 and I-680 and generally provides six travel lanes (four on the Union Pacific overcrossing). West of I-880, this facility becomes a freeway with four mixed flow lanes and two High Occupancy Vehicle (HOV) lanes. Calaveras Boulevard accommodates a significant amount of regional through-traffic during the peak commute hours. Milpitas staff estimate that approximately 50 percent of the peak hour traffic between I-680 and I-880 is generated outside of Milpitas.

The predominant direction of travel is westbound in the morning and eastbound during the afternoon.

- **Great Mall Parkway** is an east/west divided arterial connecting Capital Avenue to I-880. Under existing conditions, this roadway operates within capacity and does not experience significant peak hour congestion except at its intersection with Montague Expressway. West of I-880, Great Mall Parkway becomes Tasman Drive. Light rail construction was recently completed in the median of Great Mall Parkway.

- **Montague Expressway** is an east/west expressway in southern Milpitas that generally provides six travel lanes. It is operated by the Santa Clara County Roads and Airports Department. The peak direction of travel is westbound in the morning, and eastbound in the evening. This facility also provides HOV lanes both during the AM peak hours in the westbound direction and PM peak hours in the eastbound direction. Montague Expressway is a CMP facility that experiences severe congestion during both A.M. and P.M. commute hours. Recently, studies have been completed to determine the phasing of potential grade separations and the feasibility of widening Montague Expressway to three mixed flow lanes and one HOV lane in each direction.

- **South Main Street** is a north/south collector connecting Montague Expressway to residential areas north of Calaveras Boulevard. This roadway consists of four travel lanes from Montague Expressway to just north of Curtis Avenue, where it transitions to a two lane facility with parking on both sides. Main Street currently operates within capacity, but experiences significant congestion at its intersection with Montague Expressway.

- **South Abel Street** is a north/south arterial beginning at South Main Street and terminating at North Milpitas Boulevard. This facility is signalized at major cross streets, where left-turn pockets are provided. On-street parking is generally prohibited, except adjacent to commercial frontages. With the exception of certain movements at major intersections, this facility generally operates within its design capacity.

Regulatory Framework

The City maintains and has jurisdiction over all roadways within the vicinity of the Project Site, with several exceptions. The California Department of Transportation (Caltrans) has jurisdiction over State-designated routes including I-880, I-680 and State Route (SR) 237 (Calaveras Boulevard up to the I-680 interchange). The Santa Clara County Roads and Airports Department has jurisdiction over local county roads and the expressway system that includes Montague Expressway.

The Santa Clara Valley Transportation Authority (VTA) is an independent special district responsible for congestion management, countywide transportation planning, and bus and light rail operations in Santa Clara County. As the Congestion Management Agency (CMA) for the County, the VTA determines with input from the member agencies, State and Federal funding priorities for transportation improvements. The CMA monitors Congestion Management Program (CMP) facilities that include the freeways/key intersections along

state routes listed above, the County expressways, and other arterial roads that serve regional traffic.

The City of San Jose` has established a deficiency plan for the 22 CMP intersections in north San Jose`. The plan requires that the average delay during the evening (PM) peak hour at the 22 intersections be less than 88 seconds. According to the North San Jose` Deficiency Plan (NSJDP), the maximum delay at an intersection is capped at 150 percent of its cycle length. Each of these intersections is within the vicinity of the Project Site.

Site Circulation

The existing roadway network that feeds into the Project Site is considered incomplete. A good functioning roadway network typically has arterial streets at about 1-mile spacing. In the area east of I-880, north of Great Mall Parkway, and south of Calaveras Boulevard, Main Street and Abel Street serve as the only north-south through routes. East-west travel is broken up by the railroad tracks and Penetencia Creek, but has some connectivity from Curtis Avenue and Corning Avenue.

Pedestrian and Bicycle Routes

Bicycle and pedestrian access to the Project Site is presently provided by a series of existing sidewalks and bike lanes on Great Mall Parkway, South Abel Street, and South Main Street. Bikes are also permitted to use the shoulder area of Montague Expressway.

Transit Service

Existing bus service on the surrounding roadway network is provided by the VTA. The following routes are located in the Project vicinity: 33, 46, 47, 59, 66, 70, 71, 77, 104, 140, 180, 321. Alameda-Contra Costa Transit (AC Transit) operates on bus route 217, serving the Milpitas community. VTA routes 77, 66 and 33 are the closest to the Project Site.

VTA light rail service was recently extended to Alum Rock Avenue via center lane medians on Tasman Drive, Great Mall Parkway, and Capitol Avenue. A light rail station (park and ride facility) and bus transfer station have recently been completed near the intersection of Great Mall Parkway and South Main Street, located approximately one half mile southeast of the Project Site.

Existing Intersection Operations

During the past two years, traffic volumes and vehicular delays on city streets have decreased significantly. This is primarily due to increased unemployment rates in Santa Clara County. However, to provide a more conservative assessment of potential Project traffic impacts, the Traffic Analysis uses year 2000 traffic counts, which are substantially higher than year 2003 counts, to represent "existing traffic conditions"[6].

[6] The use of 2000 year traffic counts as “existing conditions” is intended to insure that traffic conditions with the proposed Project are not understated should the economy return to "normal" employment levels.

LOS (level of service) is the criteria used in the Traffic Analysis to describe the quality of traffic flow. LOS is graded from A to F. LOS A indicates free flowing uncongested traffic flow, while LOS F indicates gridlock. LOS D is the minimum acceptable operating level for all signalized local intersections not included in the CMP network. LOS E is the minimum acceptable operating level for signalized CMP intersections. According to these LOS standards and year 2000 traffic counts, the following signalized intersections are operating at unacceptable levels of service during one or both peak hours:

- South Abbott Avenue and West Calaveras Boulevard (SR- 237)- LOS E during morning (AM) peak
- I-880 Northbound Off-ramp and Great Mall Parkway - LOS E during PM peak
- South Milpitas Boulevard and Montague Expressway* - LOS F during AM peak
- Great Mall Parkway/East Capitol Avenue and Montague Expressway*- LOS F AM peak
- South Main Street/Oakland Road and Montague Expressway* - LOS F during PM peak
- McCarthy Boulevard/O'Toole Avenue and Montague Expressway* - LOS F during PM peak
- Alder Drive and Tasman Drive - LOS F during PM peak

  [* Denotes CMP intersections]

According to the LOS standards and year 2000 traffic counts, the following freeway segments are operating at unacceptable levels of service during one or both peak hours:

- I-880, Montague to Brokaw, Southbound - LOS F during PM peak
- I-880, Montague to Tasman, Northbound - LOS F during PM peak

5.2.2 THRESHOLDS OF SIGNIFICANCE

According to the City of Milpitas and CMP guidelines, significant adverse project impacts at signalized intersections occur when:

- The level of service at an intersection drops below its LOS standard (LOS E at CMP intersections, and LOS D on city streets) when project traffic is added; or

- An intersection that is operating worse than its level of service standard under background conditions has an increase in critical delay of four or more seconds AND the demand-to-capacity ratio (V/C) is increased by more than .01 when project traffic is added.

  For intersections included in the North San Jose` Deficiency Plan, a project would have a significant impact on North San Jose` if it caused the 22-intersection average delay under project conditions to be greater than 88 seconds.

According to CMP guidelines, a project is said to have a significant adverse impact a freeway segment if:

- The freeway segment is operating at LOS F under existing conditions, and
- The number of new trips added to by the project is more than one percent of the freeway capacity.

On roadway segments under cumulative conditions, a project is said to have a significant adverse impact on a roadway segment if:

- The roadway segment is projected to operate below its LOS standard under the existing general plan and the proposed general plan change is projected to cause an increase in traffic of at least one percent of its capacity.

On roadway segments under cumulative conditions, a project is said to benefit a roadway segment if:

- The roadway segment is projected to operate below its LOS standard under the existing general plan and the proposed general plan change is projected to cause a decrease in traffic of at least one percent of its capacity.

Other criteria applied in this DEIR to measure impacts relative to traffic and circulation, include the following:

- Significant adverse impacts related to site circulation include circulation that would increase traffic hazards, or result in inadequate emergency access.

- Significant adverse impacts related to parking are insufficient parking capacity to accommodate design.

- Significant adverse impacts related to non-vehicular transportation include conflicts with adopted policies or existing facilities related to bicycle and pedestrian access and transit facilities.

5.2.3 PROJECT IMPACTS

Project Traffic Generation

The Traffic Analysis estimated the number of vehicular trips likely to be generated by the Project based on land use type and typical trip distribution patterns. For example, residential land uses typically generate large numbers of trips to/from employment areas during the weekday AM and PM commute hours, but generate more trips to/from retail areas during weekend peak hours. Conversely, retail uses typically generate large numbers of home based trips during the AM and Saturday midday peak periods, but also attract employment trips during the PM peak hour.

Although the VTA light rail station operates along Great Mall Parkway, it is more than 2,000 feet from the proposed Project residential areas. According to CMP technical guidelines, a rail station must be located within a 2,000-foot walk of a residential area in order to result in a notable reduction in vehicle trips from that residential area. Therefore, per CMP technical guidelines, the Traffic Analysis assumed no trip reduction for proximity to transit.

As shown in Table 4, the Project is expected to result in an average of 15,006 trips per day. Approximately 40 percent of these trips are generated by the Project residential uses, and the remaining 60 percent from the proposed auto sales commercial area. Approximately 26 percent of the peak hour trips will occur during the weekday AM, and approximately 38 percent will occur during the weekday PM. The remaining 36 percent of weekly peak hour trips will occur during Saturday peak hour.

Table 4

Elmwood Trip Generation Estimates

Use	Size	Daily Trips	AM Peak Hour			PM Peak Hour			Saturday Peak Hour		
			In	Out	Total	In	Out	Total	In	Out	Total
Residential											
Single Family Homes	115	1,150	28	64	92	81	34	115	53	53	106
Townhomes	292	2,336	37	150	187	163	70	233	101	101	202
Condominiums	315	2,520	41	161	202	176	76	252	110	110	220
Total		**6,006**	**106**	**375**	**481**	**420**	**180**	**600**	**264**	**264**	**528**
Auto Center	180	9,000	315	135	450	288	432	720	382	382	764
Grand Total		**15,006**	**421**	**510**	**931**	**708**	**612**	**1,320**	**646**	**646**	**1,292**

Source: Hexagon Transportation Consultants, Inc. *Elmwood Residential and Commercial - Transportation Impact Analysis*. August 18, 2004. See Appendix ***. Based on Table 11, Scenario 1 data.

Intersection Impacts

As part of the Project, the intersection of the Project Driveway (north)/Post Office Driveway and Abel Street would be signalized. In its assessment of Project generated traffic impacts, the Traffic Analysis assumed that the signal would be installed by the Project. Aside from this improvement, the roadway network was assumed to be the same as that of the existing conditions.

According to LOS criteria and V/C thresholds noted above, Project traffic would result in the following eight intersections operating at unacceptable levels of service for one or both peak hours:

1. I-880 Northbound Off-ramp and Great Mall Parkway
2. South Abel Street and Great Mall Parkway
3. I-880 Southbound Off-ramp and Tasman Drive
4. Calaveras Boulevard and Milpitas Boulevard*
5. Great Mall Parkway/East Capitol Avenue and Montague Expressway*
6. Alder Drive and Tasman Drive
7. South Main Street and Carlo Street (unsignalized)
8. South Main Street and Corning Avenue (unsignalized)

[*Denotes CMP intersections.]

To address the deficiencies at the two unsignalized intersections of South Main Street and Carlo Street and South Main Street and Corning Avenue, a signal warrant analysis needs

to be conducted to determine if traffic signals should be installed. Mitigation measures TR-1 and TR-2 have been added to the Project requiring the development to pay for a warrant analysis at each intersection. The development will pay a "fair share" towards the cost of construction of new signals at these intersections if deemed warranted by the City Traffic Engineer. These mitigation measures are expected to reduce Project related traffic impacts at these two intersections to less than significant levels.

The remaining six intersections that would be impacted by the Project evaluated through the Milpitas Midtown Specific Plan EIR. These intersections include:

1. I-880 Northbound Off-ramp and Great Mall Parkway
2. South Abel Street and Great Mall Parkway
3. I-880 Southbound Off-ramp and Tasman Drive
4. Calaveras Boulevard and Milpitas Boulevard
5. Alder Drive and Tasman Drive
6. Great Mall Parkway/East Capitol Avenue and Montague Expressway

The Midtown Specific Plan EIR found that Specific Plan development would cause these intersections to operate at unacceptable levels. To address these roadway deficiencies, the Midtown Specific Plan EIR recommended a series of mitigation measures, which apply to all new development in the Midtown planning area, including this Project. However, according to that EIR, these measures only partially mitigate the roadway deficiencies; with the exception of Alder Drive and Tasman Drive, which was found to be fully mitigated. Consequently, the Midtown Specific Plan EIR found that impacts at the following intersections would be significant and unavoidable, and a Statement of Overriding Considerations was subsequently adopted by the City upon approval of the Midtown Specific Plan:

1. I-880 Northbound Off-ramp and Great Mall Parkway
2. South Abel Street and Great Mall Parkway
3. I-880 Southbound Off-ramp and Tasman Drive
4. Calaveras Boulevard and Milpitas Boulevard
5. Great Mall Parkway/East Capitol Avenue and Montague Expressway.

The Project will be required to contribute its fair share to the mitigation measures recommended by the Specific Plan EIR. These mitigation measures are applied to the Project as measures TR-3 through TR-7. Although the Project is not expected to create any new impacts at the above listed intersections, these impacts will remain significant and unavoidable..

To mitigate expected deficiencies at Alder Drive and Tasman Drive, the Midtown Specific Plan EIR recommended restriping of the northbound shared through/right-turn lane as a separate right-turn lane and the provision of an overlap signal phase. The Specific Plan EIR also recommended that the mitigation measure for this intersection be re-evaluated in the future due to potential complications with light rail operation, which runs through the intersection along Tasman Drive. With the light rail now completed, a re-evaluation of this

mitigation was conducted as part of the Traffic Analysis for the Elmwood Residential and Commercial Development Project. Under current conditions, this mitigation measure would not fully mitigate expected deficiencies as the Alder/Tasman Drive intersection; and no other improvements to this intersection are feasible. Therefore, Project impacts to this intersection would not be fully mitigated, and will be significant and unavoidable.

Freeway Impacts

According to LOS criteria and V/C thresholds noted above, Project traffic would result in the following freeway segments operating at unacceptable levels of service for one or both peak hours:

1. I-880, Tasman Drive to Montague Expressway - Northbound (PM peak hour)
2. I-880, Brokaw Road to Montague Expressway - Southbound (PM peak hour)

Impacts on the freeway segments shown above are located on or directly adjacent to the recent widening of I-880 between Montague Expressway and U.S. 101. However, CMP data used in the Traffic Analysis projections were based on traffic conditions before the widening. For this reason, the freeway level of service calculated report may be artificially poor. The traffic conditions on these segments will show significant improvement in the next round of CMP monitoring, which would offset the impact of project traffic. However, the the level of improvement cannot be predicted with certainty; and no feasible Project mitigations for these freeway deficiencies exist. Consequently, Project impacts to the two freeway segments listed above are considered significant and unavoidable.

Impacts at these 2 freeway segments were previously evaluated through the Midtown Specific Plan EIR. According to that analysis, build-out of the Specific Plan would cause these freeway segments to operate at unacceptable levels. Because the City does not have authority to mitigate freeway impacts, the Specific Plan EIR found that these impacts would be significant and unavoidable, and a Statement of Overriding Considerations was subsequently adopted by the City for these impacts. Although the Project is not expected to create any new impacts at the above freeway segents, these impacts will remain significant and unavoidable.

North San Jose` Impacts

TheProject traffic impacts on the north San Jose area were evaluated using the NSJDP criteria. Average delay of the designated 22 intersections would be 60 seconds, with or without Project development. This 60 second delay is less than the established NSJDP threshold of 88 seconds. Accordingly, the proposed development impacts on North San Jose` would be less than significant

Other Transportation Impacts

Potential Project impacts to site circulation, parking, pedestrian and bicycle travel, and transit are evaluated based on adopted City policies and standards.

Site Circulation and Parking

The residential components of the Project would have two or more points of access that would be located and designed in accordance with City standards for traffic safety and adequate emergency access. All access points and interior streets would be designed to City standards and subject to review and approval by the City. Similarly, resident and guest parking for the residential component would be designed in compliance with City standards.

A concept site plan for the commercial auto mall component, inclusive of vehicular access has yet to be designed. However, design of the auto mall, inclusive of vehicular and emergency access, interior streets and parking, would be required to comply with City standards and subject to review and approval by the City.

The Project's internal circulation is expected to be adequate. In addition, the Elmwood access road proposed by the Project offers an opportunity for future linkages to S. Abbott Avenue. This linkage would help complete the area roadway network, providing future residents of the area an access route that avoids the congested intersections at Abel/Calaveras or Abel/Great Mall Parkway.

The Project is not expected to result in potentially significant adverse impacts related to site circulation or parking.

Pedestrian and Bicycle Access Impacts

Although the streets within the Project would not contain bike lanes, the traffic volumes and vehicle speeds within the Project would be sufficiently low that shared use of the roadway between bikes and motor vehicles would be feasible. New bike lanes along Abel Street will be installed with the planned streetscape improvements

Sidewalks are provided on Great Mall Parkway and Abel Street, as well as in the residential neighborhood to the north. Sidewalks will also be provided on Project streets in accordance with City standards. The proposed development would increase the demand for offsite pedestrian facilities. However, this demand would not create the need for sidewalks and crosswalks greater than what is currently provided. The Project is not expected to result in potentially significant adverse impacts related to pedestrian and bicycle access.

Transit Impacts

Bus service in the vicinity of the Project Site operates within capacity. Although the Project would increase the demand for such facilities in the vicinity of the site, the addition of these trips is not expected to result in a demand for transit service greater than what is currently being provided.

Residents of the Project would reside approximately one-half mile from the Tasman east light rail station at the Great Mall of the Bay Area. The light rail station and its companion bus transfer station have recently been completed. These facilities increase the likelihood that the future residents of the Project would ride transit. However, the incremental impact of this Project on system-wide ridership would be minimal. The Project is not expected to result in potentially significant adverse impacts related to transit.

Cumulative Impacts

Cumulative impacts of the Project were measured by adding Project traffic to the City's 2015 traffic model which includes land use forecasts based on the City's General Plan and land use assumptions published for Santa Clara County by the Association of Bay Area Governments (ABAG) projections. Proposed Project changes to the General Plan designations for the site were included in the assessment of cumulative impacts. In addition, the assessment assumed planned transportation improvements would be constructed, including:

- I-880 widening Projects – I-880 will be widened to include a high occupancy vehicle lane and auxiliary lane in each direction from Montague Expressway north into Alameda County.

- Fremont Boulevard Extension to Dixon Landing Road– Fremont Boulevard will be extended southward from its current terminus near Lakeview Drive to Dixon Landing Road. The Fremont Boulevard extension will include two lanes in each direction and will form the forth leg of the McCarthy Boulevard/Dixon Landing Road intersection.

As noted previously, the Project proposes to amend the Specific Plan and General Plan land use designations on a portion of the Project Site from General Commercial and Parks/Recreation to Multifamily high density. This proposed amendment would decrease expected daily traffic by 8,514 trips, decrease PM peak hour traffic by 612 trips, and increase AM peak hour traffic by 99 trips. The cumulative effect of these changes would improve traffic conditions (have a beneficial impact) on the following road segments:

- Great Mall Parkway, I-880 to Main, westbound, AM
- Main Street, Carlo to Curtis, southbound, AM
- Calaveras Boulevard, Abel to Milpitas, eastbound, PM
- Calaveras Boulevard, Hill view to I-680, eastbound, PM

- Main Street, Curtis to Carlo, northbound, PM

However, the cumulative effect would increase traffic (have an adverse impact) on the following segment:

- Tasman Drive, McCarthy to I-880, westbound, AM

Aside from the Mitigation Measures TR-1 through TR-7, already added to the Project, no mitigation measure for the above segment is considered feasible. For this reason, this cumulative impact is considered significant and unavoidable.

Summary of Traffic Impacts

Intersections

The Project would result in significant adverse impacts to eight roadway intersections, two freeway segments, and cumulative impacts to one roadway segment. Impacts at two of the intersections, South Main Street and Carlo Street and South Main Street and Corning Avenue, are mitigated by measures TR-1 and TR-2, which require installation of traffic signals. Impacts at the other six intersections have already been addressed through the Midtown Specific Plan EIR, which recommended a series of measures to mitigate, at least in part, impacts to these intersections. These six intersections are:

1. I-880 Northbound Off-ramp and Great Mall Parkway
2. South Abel Street and Great Mall Parkway
3. I-880 Southbound Off-ramp and Tasman Drive
4. Calaveras Boulevard and Milpitas Boulevard
5. Alder Drive and Tasman Drive
6. Great Mall Parkway/East Capitol Avenue and Montague Expressway.

The Project will be required to contribute its fair share to the mitigation measures established by the Specific Plan EIR. These mitigation measures are applied to the Project as measures TR-3 through TR-7, below.. Although the Project is not expected to create any new impacts at the above listed intersections, these impacts will remain significant and unavoidable.

Freeways

The Project would result in significant adverse impacts to two freeway segments I-880: Tasman Drive to Montague Expressway - Northbound (PM peak hour); and I-880, Brokaw Road to Montague Expressway - Southbound (PM peak hour). Impacts at these 2 freeway segments were previously evaluated through the Midtown Specific Plan EIR, which found these impacts to be significant and unavoidable. As part of the Midtown Specific Plan approval process, a Statement of Overriding Considerations was subsequently adopted by the City for these impacts. Although the Project is not expected to create any new impacts at the two freeway segments, these impacts will remain significant and unavoidable.

Cumulatvie Impacts

The Project would have a significant adverse cumulative effect on the following segment: Tasman Drive, McCarthy to I-880, westbound, AM. No mitigation measure for the above segment is considered feasible, and this impact remains significant and unavoidable.

5.2.4 MITIGATION MEASURES

TR-1: The intersection of South Main Street and Carlo Way is currently unsignalized. Prior to issuance of any building permit for the Project, the developer shall pay for a signal warrant analysis at this location. If the City determines that a signal is warranted then the developer shall pay a “fair share” cost towards the construction of the signal. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts.

TR-2: The intersection of South Main Street and Corning Avenue is currently unsignalized.. Prior to issuance of any building permit for the Project, the developer pay for a signal warrant analysis at this location. If the City determines that a signal is warranted then the developer shall pay a “fair share” cost towards the construction of the signal. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts.

TR- 3. The city has set up a traffic mitigation fee within the Midtown Specific Plan area to fund improvements that are not feasible for individual projects. Prior to issuance of any building permit for the Project, the developer shall pay to the City its "fair share" of these fees. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts.

TR-4. The City of Milpitas and County of Santa Clara currently have plans to widen Montague Expressway between I-880 and I-680 to three mixed flow lanes and one 24-hour HOV lane in each direction. The segment between Great Mall Parkway and I-680 has not been fully funded by the City of Milpitas and the County of Santa Clara. Prior to issuance of any building permit for the Project, the developer shall pay to the City a "fair share" of the costs of widening Montague Expressway. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts.

TR-5. The City of Milpitas is currently planning traffic improvements at the intersection of Calaveras Boulevard/Abel Street. Improvements to this intersection would decrease traffic delays on Calaveras Boulevard, which is a key east/west commute corridor in the city. Prior to issuance of any building permit for the Project, the developer shall pay to the City a "fair share" of the costs of these improvements. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts.

TR-6: The City of Milpitas is currently planning signal timing improvements on Great Mall Parkway. Improvements to this corridor would decrease traffic delays on Great Mall Parkway, which is a key east/west commute corridor in the city. Prior to issuance of any building permit for the Project, the developer shall pay to the City a "fair share" of the costs

of these improvements. The "fair share" cost is to be determined by the City based on the magnitude of the project impacts.

TR-7. Elmwood Road would form the north leg of the Great Mall Parkway/I-880 Ramps intersection. As it is currently configured, the north (southbound) approach of this intersection has one right-turn lane and one shared left-through lane. Improvements to the north leg of the intersection where project access occurs would improve intersection operations. Prior to issuance of any building permit for the Project, the developer shall implement the following geometry at the north leg:

- North (Southbound) Approach: One right-turn lane, one shared through-left turn lane, and one left-turn lane.
- North Receiving Lane: One northbound lane.

In addition, the developer shall construct all signal modifications in conjunction with this improvement.

5.2.5 SIGNIFICANCE AFTER MITIGATION

Mitigation Measures TR-1 through TR-7 are not expected to fully mitigate Project impacts relative to the six intersections and two freeway segments. These impacts will remain significant and unavoidable. Regarding cumulative Project impacts to Tasman Drive, McCarthy to I-880, westbound, AM, no mitigation measure is considered feasible; and a significant unavoidable impact would occur. The City should consider a future linkage to South Abbott Avenue to help complete the area roadway network.

5.3 AIR QUALITY

This section discusses existing air quality levels and standards in the Project area. Potential impacts to air quality that could result from Project implementation are identified, and where appropriate, mitigation measures are identified.

The following discussion of air quality is primarily based on the *Air Quality Impact Analysis for the Proposed KB Home Elmwood Project, City of Milpitas,* by Donald Ballanti, dated September 2004 (Air Quality Study). A copy of this study is presented in Appendix D of this DEIR. This section also tiers from the air quality analysis in the Midtown Specific Plan EIR, is further detailed below.

5.3.1 EXISTING CONDITIONS

The City of Milpitas, inclusive of the Project area, lies within the western portion of the San Francisco Bay Area Air Basin (Basin), an area encompassing all of Marin, Napa, Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco, and parts of Sonoma and Solano counties. The basin is characterized by a varied terrain consisting of coastal mountain ranges, and inland valleys and bays. The basin is bounded on the west by the Pacific Ocean, on the north by the Coast Range, and on the east and south by the Diablo Range.

Climate of the basin is dominated by a semi-permanent, subtropical high-pressure cell over the northeastern Pacific Ocean, and is affected by the moderating effects of the adjacent oceanic heat reservoir. These conditions generally bring mild summers and winters, moderate rainfall, daytime onshore breezes, and moderate humidities. Temperatures in the

TABLE 5
AIR POLLUTANTS - TYPES AND DESCRIPTIONS

POLLUTANT TYPE	DESCRIPTION	EFFECTS	SOURCES
Carbon Monoxide (CO)	Colorless, odorless toxic gas produced by incomplete combustion of carbon-containing substances	Passes through lungs into blood stream. Deprives sensitive tissue of oxygen.	Gasoline powered motor vehicles
Nitrogen Dioxide (NO_2)	The principal form of nitrogen oxide produced by combustion is nitrogen oxide (NO), but NO reacts quickly to form NO_2. NO is colorless, odorless gas formed when combustion takes place under high pressure and/or temperature. NO_2 forms by congestion of NO and oxygen. Participants in photochemical smog reactions.	Irritating to eyes and respiratory tract. Colors atmosphere reddish-brown.	Motor vehicles primary source. Other sources: petroleum refining operations, industrial sources, railroads, aircraft.
Sulfur Dioxides (SO_2)	Colorless, pungent gas formed by combustion of sulfur-containing fossil fuels.	Irritates upper respiratory tract; injurious to lung tissue. Can yellow the leaves of plants, destructive to marble, iron and steel. Limits visibility and reduces sunlight.	Fuel combustion primary source. Other sources: chemical plants, sulfur recovery plants, and metal processing.
Ozone (O_3)	Created in atmosphere during photochemical process and not emitted directly. Most ozone in the atmosphere is formed as a result of the interaction of ultraviolet light, ROG, and NOx. ROG is composed of nonmethane hydrocarbons, and NOx is made of different chemical combinations of nitrogen and oxygen. Ozone is a pungent, colorless toxic gas.	Common effects are damage to vegetation and cracking of untreated rubber. High concentration can directly affect lungs, causing irritation.	Motor vehicles major source of emission of oxidants of nitrogen and reactive hydrocarbons, which are ozone precursors.
Fine Particulate Matter (PM_{10})	Made of finely-divided solids or liquids such as soot, dust, aerosols, fumes and mists.	May irritate eyes and respiratory tract. Absorbs sunlight, reducing amount of solar energy reaching the earth. Produces haze and limits visibility. Can damage materials.	Dust and fume-producing industrial and agricultural operations, construction, combustion products including exhaust, atmospheric photochemical reactions. Natural activities such as wind-raised dust and ocean spray.

Source: California Air Resources Board

Basin are moderate, with average annual temperatures of 50 degrees Fahrenheit (F) annually (Felton 1965).

Rainfall averages approximately 22 inches annually, and occurs almost exclusively from October through April. Summers are mild and relatively dry with four to five months without rain. Conditions in the bay produce periodic fog during the morning. Winters are mild and generally rainy.

Air Quality Setting

Pollutants

Regional wind flow patterns direct airborne pollutants downwind of their sources. When winds are moderate, these pollutants are dispersed and pollutant concentrations are reduced. When a warm layer of air traps cooler air close to the ground, an inversion layer is produced. Such temperature inversions hamper dispersion by creating a thermal ceiling over the area and trapping air pollutants near the ground. During summer mornings and afternoons, such inversions can be present over the Project area. Mixed with summer's longer daylight hours and plentiful sunshine, these inversions fuel photochemical reactions between nitrogen oxides (NOx) and reactive organic gases (ROG), which result in ozone (O_3) formation. In the winter, temperature inversions dominate during the night and early morning hours but frequently dissipate by afternoon. At this time, the greatest pollution problems are from carbon monoxide (CO) and NOx. High CO concentrations occur on cold winter mornings with strong surface inversions and light winds. These primary contaminants are described in Table 6, below.

Ambient Air Quality Standards (AAQS)

Ambient air quality standards pertain to the level of air quality considered safe to protect the general public health and welfare. National Ambient Air Quality Standards were established in 1971 to protect "sensitive receptors" (those people most susceptible to further respiratory distress such as asthmatics, the elderly, very young children, people already weakened by other disease or illness and persons engaged in strenuous work or exercise). Healthy adults can tolerate occasional exposure to air pollutant concentrations somewhat above these minimal standards before adverse effects are observed. However, research has found that there may be adverse respiratory effects from chronic exposure to ozone levels that only marginally exceed or even meet one-hour national clean air standards. Therefore, an 8-hour ozone standard was adopted in 1997 to provide more protection from chronic ozone exposure.

National AAQS were established as part of the Clean Air Act in 1971 for six pollutants with states retaining the option to add others, require more stringent compliance, or include different exposure periods. National criteria air pollutants include ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, suspended particulate matter and airborne lead. The initial attainment deadline of 1977 was extended to 1987 for national AAQS and was subsequently further extended in air quality problem areas like the Bay Area. An extension of the Clean Air Act with revised attainment deadlines was adopted in 1990 with a more realistic attainment deadline of 2010 now established for ozone, which is the pollutant that exceeds the national AAQS by the widest margin. Because California had established the state AAQS several years (1969) before establishment of the national AAQS, and because of unique California air quality problems, there is considerable difference between state and national clean air standards. Those standards currently in effect in California are shown in Table 6. The federal primary standards, also shown in Table 6, are mainly designed to protect the public health and welfare, and the federal secondary standards are designed to protect property and economic resources.

The federal Clean Air Act Amendments (CAAA) of 1990 required that the U.S. Environmental Protection City (EPA) review all national AAQS in light of all current health data. EPA was charged with modifying existing standards or promulgating new ones where appropriate. EPA subsequently developed standards for chronic ozone exposure (8+ hours per day) and for very small diameter particulate matter (called "PM-2.5"). New national AAQS were adopted on July 17, 1997. California standards for PM-10, which includes PM-2.5, are more stringent than the federal PM-2.5 standard. Federal and state standards currently in effect are shown in Table 6.

TABLE 6
STATE AND FEDERAL AMBIENT AIR QUALITY STANDARDS

AIR POLLUTANT	STATE	FEDERAL	
	CONCENTRATION	PRIMARY (>)	SECONDARY (>)
Ozone (O3)	0.09 ppm, 1-hr. avg. >	0.08 ppm, 8-hr. avg. 0.12 ppm, 1-hr. avg.	0.12 ppm, 1-hr. avg.
Carbon Monoxide (CO)	9 ppm, 8-hr. avg. > 20 ppm, 1-hr. avg. >	9 ppm, 8-hr. avg. 35 ppm, 1-hr. avg. >	9 ppm, 8-hr. avg. 35 ppm, 1-hr. avg. >
Nitrogen Dioxide (NO_2)	0.25 ppm, 1-hr. avg. >	0.053 ppm, annual avg.	0.053 ppm, annual avg.
Sulfur Dioxide (SO_2)	0.05 ppm, 24-hr. avg. > with ozone > 0.10 ppm, 1-hr. avg. or TSP > 100 µg/m3, 24-hr. avg. 0.25 ppm, 1-hr. avg. >	0.03 ppm, annual avg. 0.14 ppm, 24-hr. avg.	0.50 ppm, 3-hr. avg.
Particulate Matter < 2.5 microns (PM2.5)	N/A	15 µg/m3, annual arithmetic mean 65 µg/m3, 24-hr. avg.	N/A
Particulate Matter < 10 microns (PM10)	30 µg/m3, annual geometric mean > 50 µg/m3, 24-hr. avg. >	50 µg/m3, annual arithmetic mean 150 µg/m3, 24-hr. avg.	50 µg/m3, annual arithmetic mean 150µg/m3, 24-hr. avg.
Sulfates	25 µg/m3, 24-hr. avg. >	N/A	N/A
Lead (Pb)	1.5 µg/m3, 30-day avg. >	1.5 µg/m3, calendar quarter	1.5 µg/m3, calendar quarter
Hydrogen Sulfide	0.03 ppm, 1-hr. avg. >	N/A	N/A
Vinyl Chloride	0.010 ppm, 24-hr. avg. >	N/A	N/A
Visibility Reducing Particles	In sufficient amount to reduce the visual range to less than 10 miles at relative humidity less than 70%, 8-hr. avg. (9am-5pm)	N/A	N/A

Notes: ppm - parts per million, µg/m3- micrograms per cubic meter, N/A - Not applicable
Source: California Air Resources Board, Ambient Air Quality Standards, January 25, 1999

Air Quality Monitoring Data

Existing levels of ambient air quality and historical trends and projections in the Project area are documented from measurements made by the BAAQMD for the Basin. Baseline air quality in the Milpitas area can be inferred from ambient air quality measurements conducted at the San Jose 4th Street monitoring station. This is the closest station in proximity to the Project area that is representative of the air quality in Milpitas. This monitoring station records pollutant levels for ozone, nitrogen dioxide, carbon monoxide, and particulates, and reports number of days that pollutant levels exceed state and federal standards. Table 7 summarizes the recent monitoring history at the San Jose station for years 2000 – 2002. As illustrated in the Table, the area has been consistently below state and federal pollutant level thresholds. The one exception is $PM_{10,}$ for which the area had exceeded state pollutant levels for 7 days in 2000 and 4 days in 2001.

Table 7

Summary of Criteria Pollutant Air Quality Data for San Jose Fourth Street Monitoring Site *(Number of days a state or federal air quality standard was exceeded)*

Pollutant	**Standard**	**Days Exceeding Standard in:**		
		2000	**2001**	**2002**
Ozone	Federal 1-Hour	0	0	0
Ozone	State 1-Hour	0	0	0
Ozone	Federal 8-Hour	0	0	0
Carbon Monoxide	State/Federal 8-Hour	0	0	0
Nitrogen Dioxide	State 1-Hour	0	0	0
PM_{10}	Federal 24-Hour	0	0	0
PM_{10}	State 24-Hour	7	4	0
$PM_{2.5}$	Federal 24-Hour	0	0	0

Source: California Air Resources Board, Aerometric Data Analysis and Management System (ADAM), (www.arb.ca.gov/adam/), 2003.

Attainment Status and Regional Air Quality Plans

The federal Clean Air Act and the California Clean Air Act of 1988 require that the State Air Resources Board, based on air quality monitoring data, designate as "nonattainment areas" portions of the state where the federal or state ambient air quality standards are not

met. Because of the differences between the national and state standards, the designation of nonattainment areas is different under the federal and state legislation.

The Bay Area is currently a nonattainment for 1-hour ozone standard and attainment of unclassified for other federal standards. However, in April 2004, U.S. EPA made a final finding that the Bay Area has attained the national 1-hour ozone standard. The finding of attainment does not mean the Bay Area has been reclassified as an attainment area for the 1-hour standard. The region must submit a re-designation request to EPA in order to be reclassified as an attainment area.

The California Air Resources Board and U. S. Environmental Protection Agency have both proposed that the San Francisco Bay Area be classified as a nonattainment area for the federal 8-hour ozone standard. The California Air Resources Board and U. S. Environmental Protection Agency have both proposed that the San Francisco Bay Area be considered unclassifiable with respect to the federal $PM_{2.5}$ standards. Unclassifiable means that an area cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant. U.S. EPA plans to finalize $PM_{2.5}$ designations by December 15, 2004.

5.3.2 THRESHOLD FOR DETERMINING SIGNIFICANCE

Using the *BAAQMD CEQA Guidelines*[7], significant air quality impacts are described as follows:

- A project contributing to carbon monoxide (CO) concentrations exceeding the State Ambient Air Quality Standard of 9 parts per million (ppm) averaged over 8 hours or 20 ppm for 1 hour would be considered to have a significant impact.

- A project that generates criteria air pollutant emissions in excess of the BAAQMD annual or daily thresholds would be considered to have a significant air quality impact. The current thresholds are 15 tons/year or 80 pounds/day for Reactive Organic Gases (ROG), Nitrogen Oxides (NOx) or PM10. Any proposed project that would individually have a significant air quality impact would also be considered to have a significant cumulative air quality impact.

The BAAQMD significance threshold for construction dust impact is based on the appropriateness of construction dust controls. The BAAQMD guidelines provide feasible control measures for construction emission of PM_{10}. If the appropriate construction controls are to be implemented, then air pollutant emissions for construction activities would be considered less-than-significant.

[7] Bay Area Air Quality Management District, BAAQMD CEQA Guidelines, 1996 (Revised December 1999).

5.3.3 POTENTIAL IMPACTS

Construction-Related Impacts

Construction activities such as clearing, excavation and grading operations, construction vehicle traffic and wind blowing over exposed earth would generate exhaust emissions and fugitive particulate matter emissions that would temporarily affect local air quality for adjacent land uses. Construction-related emissions are generally short-term is duration, but may still cause adverse air quality impacts. According to the BAAQMD, fine particulate matter (PM_{10}) is the pollutant of greatest concern during construction. Although equipment and vehicles create gaseous pollutants such as carbon monoxide and ozone precursors, these emissions are considered as included in the emission inventory that is the basis for regional air plans, and are not expected to impede attainment or maintenance of ozone and carbon monoxide standards in the Bay Area.[8]

Diesel: During construction various diesel-powered vehicles and equipment would be in use on the site. In 1998 the California Air Resources Board identified particulate matter from diesel-fueled engines as a toxic air contaminant (TAC).[9] High volume diesel traffic on freeways and stationary facilities attracting heavy and constant diesel vehicle traffic (such as distribution centers and truckstop) were identified as having the highest associated risk. Unlike the above types of sources, construction diesel emissions are temporary, affecting an area for a period of days or perhaps weeks. Additionally, construction related sources are mobile and transient in nature, and the bulk of the emission occurs within the project site at a substantial distance from nearby receptors. Because of its short duration, health risks form construction emissions of diesel particulate would be a less-than-significant impact.

Construction Dust: Grading, earthmoving and excavation are the activities that generate the most PM_{10} emissions. Impacts would be localized, variable and short-term. The effects of construction activities would be increased dustfall and locally elevated levels of PM_{10} downwind of construction activity. Construction dust has the potential for creating a nuisance at nearby properties. This impact is considered potentially significant.

Similar construction related air quality impacts were identified through the Midtown Specific Plan EIR process. To address these impacts, the Midtown Specific Plan EIR recommended a mitigation measure to control dust. The Project would be subject to this mitigation measure, which is added to the Project as Mitigation Measure AQ-1. However, according to the Specific Plan EIR, this measure offers only partial mitigation. Consequently, the Midtown Specific Plan EIR found that construction related air quality impacts in the Midtown Area, inclusive of the Project Site, would be significant and unavoidable, and a Statement of Overriding Considerations was subsequently adopted by the City for these impacts.

[8] Bay Area Air Quality Management District, BAAQMD CEQA Guidelines, 1996 (Revised December 1999).

[9] California Air Resources Board, Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, October 2000.

Although the Project proposes to amend the Specific Plan, converting designated park/open space land to residential and designated commercial land to residential, the area of construction on the site is not expected to change substantially from that anticipated in the Specific Plan EIR. Consequently, the Project is not expected to create new construction related air quality impacts beyond those already considered by the Specific Plan EIR. However, because construction level air quality emissions cannot be fully mitigated, this impact remains significant and unavoidable.

Permanent Local Impacts

On the local scale, the Project would change traffic on the local street network, thus changing carbon monoxide levels along roadways used by Project traffic. Carbon monoxide is an odorless, colorless poisonous gas whose primary source in the Bay Area is automobiles. Concentrations of this gas are highest near intersections of major roads.

The Air Quality Study estimated carbon monoxide concentrations under worst-case meteorological conditions for signalized intersections affected by Project. These intersections were selected as worst cast cases based on intersection level of service and average delay. PM peak traffic volumes were applied to the a screening form of the CALINE-4 dispersion model to predict maximum 1-and 8-hour concentrations near these intersections under the worst-case assumption that background and Project traffic changes would occur in 2004. Appendix D provides a description of the model and a discussion of the methodology and assumptions used in the study. Results of the model run found that Project traffic would increase concentrations along most intersections by up to 0.4 PPM, but concentrations would remain below the most stringent state or federal standards.

Since Project traffic would not cause any new violations of the 8-hour standards for carbon monoxide, nor contribute substantially to an existing or projected violation, Project impacts on local carbon monoxide concentrations are considered to be less than significant.

Regional Impacts

Vehicle trips generated by the project would result in air pollutant emissions affecting the entire San Francisco Bay Air Basin. The Air Quality Study calculated regional emissions associated with Project traffic, using the URBEMIS2002 emission model. Appendix D provides a description of the model and a discussion of the methodology and assumptions used in the study.

The incremental daily emission increase associated with Project land uses is identified in Table8, below, for reactive organic gases and oxides of nitrogen (two precursors of ozone) and PM_{10}. The BAAQMD has established threshold of significance for ozone precursors and PM_{10} of 80 pounds per day. Project emissions shown in Table 8 would exceed these thresholds of significance; the Project would have a significant cumulative effect on regional air quality.

Similar regional air quality impacts were identified through the Midtown Specific Plan EIR process. To address these impacts, the Midtown Specific Plan EIR recommended that all future development in the Midtown Area comply with Specific Plan policies that encourage a compatible mixture of land uses, provide for a land-use mix that supports major transit facilities, locate higher density development around hubs and commercial centers, provide for the continuation of pedestrian-oriented retail development, and provide pedestrian connections between the transit stations and important destinations. However, according to that EIR, these measures offer only partial mitigation. Consequently, the Midtown Specific Plan EIR found that cumulative air quality impacts in the Midtown Area, inclusive of the Project Site, would be significant and unavoidable, and a Statement of Overriding Considerations was subsequently adopted by the City for these impacts.

The Project is consistent with the above stated Specific Plan policies. It provides for a mix of residential, park and commercial land uses; it is located approximately one-half mile from the Tasman east light rail station at the Great Mall of the Bay Area; it provides 315 units of high density podium condominiums; it provides pedestrian linkage through a system of sidewalks and trails. As noted in Section 5.2.3., above, by proposing to increase the proportion of residential land uses relative to commercial, the Project would decrease expected daily traffic by 8,514 trips. In addition, to further reduce regional air quality impacts, Mitigation Measure AQ-2 is added to the Project to help reduce vehicular pollutant emissions by 10-20%. Even with a reduction of this magnitude, project emissions would remain well above the BAAQMD significance threshold of 80 pounds per day. Similar to the findings of the Specific Plan EIR, regional air quality impacts remain significant and unavoidable.

Table 8
Project Regional Emissions in Pounds Per Day

	Reactive *Organic* Gases	**Nitrogen Oxides**	**PM_{10}**
Scenario 1	126.3	124.3	97.8
Scenario 2	179.1	182.5	143.0
BAAQMD Significance Threshold	80.0	80.0	80.0

Summary of Air Quality Impacts

Significant air quality impacts associated with the Project include construction dust emissions and vehicular emissions that exceed established regional air pollutant thresholds. Mitigation Measures AQ-1 and AQ-2, below, are applied to the Project to reduce these impacts. However, these measures provide only partial mitigation, and these impacts remain significant and unavoidable.

5.3.4 MITIGATION MEASURES

Construction Impacts

AQ-1: The developer shall implement the following basic control measures at all Project construction sites:

- Water all active construction areas
- Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas
- Sweep daily
- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas
- Enclose, water or apply non-toxic soil binders to exposed stockpiles
- Limit traffic speeds on unpaved roads to 15 miles per hour
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways
- Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts.

Regional Operational Impacts

AQ-1: The developer shall implement the following measures, which have been identified by BAAQMD, to reduce vehicle emissions:

Residential Development Measures:

- Provide bicycle lanes, sidewalks and/or paths, connecting project residences to adjacent schools, parks, the nearest transit stop and nearby commercial areas. Provide a satellite tele-commute center within or near the development.
- Provide secure and conveniently placed bicycle parking and storage facilities at parks and other facilities.

- Implement feasible travel demand management (TDM) measures for a project of this type. This would include a ride-matching program, coordination with regional ride-sharing organizations, provision of transit information, and provision of shuttle service to major destinations.
- Allow only natural gas fireplaces, pellet stoves or EPA-Certified wood-burning fireplaces or stoves in single-family houses. Conventional open-hearth fireplaces should not be permitted. EPA-Certified fireplaces and fireplace inserts are 75 percent effective in reducing emissions from this source.
- Use electric lawn and garden equipment for landscaping.
- Construct transit amenities such as bus turnouts/bus bulbs, benches, shelters, etc.
- Provide direct, safe, attractive pedestrian access from project land uses to transit stops and adjacent development.
- Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand.

Commercial Development Measures:

- The commercial portion of the project should be required to apply TSM measures to reduce trips. Appropriate strategies would be:
- Provide physical improvements to commercial areas, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.
- Connect site with regional bikeway/pedestrian trail system.
- Provide transit information kiosks.
- Provide showers and lockers for employees bicycling or walking to work.
- Provide secure and conveniently located bicycle parking and storage for workers and patrons.
- Provide electric vehicle charging facilities.
- Provide preferential parking for Low Emission Vehicles (LEVs).
- Specialty equipment (utility carts, forklifts, etc.) should be electrically, CNG or propane powered.
- Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand.

5.3.5 SIGNIFICANCE AFTER MITIGATION

Mitigation Measure AQ-1 is not expected to fully mitigate air quality impacts related to construction dust. Similarly, Mitigation Measure AQ-2 is not expected to fully mitigate regional air quality impacts related to vehicular emissions. These impacts will remain significant and unavoidable.

5.4 NOISE

This section of the EIR discusses existing noise conditions in the vicinity of the Project Site, and summarizes the potential impacts relative to noise from Project implementation. Where appropriate, mitigation measures are identified. Information for this section was obtained from the Elmwood General Plan and Zoning EIR Environmental Noise Assessment, Milpitas, California, prepared by Illingworth & Rodkin, Inc., August 2004 (Noise Analysis).

5.4.1 EXISTING CONDITIONS

Noise Terminology

Sound is mechanical energy transmitted by pressure waves in a compressible medium such as air. Noise is commonly defined as unwanted sound. Noise, defined as unwanted or excessive sound, is a form of environmental degradation. Noise is typically a byproduct of transportation systems, certain land uses and on-going human activity. The full effect of noise on individuals in the community varies with the duration of the noise, its intensity and frequency, and the tolerance level of those exposed. The common unit for measuring sound (or noise) to the faintest level detectable by a person with good hearing is called a decibel (dB).

There are several methods of characterizing the intensity of noise. The most common in California is the A-weighted sound level or dBA. This scale gives greater weight to the frequencies of sound to which the human ear is most sensitive. Other methods describe intensity of sound based on duration, time of day and tone of noise. Most Commonly sound levels are described in terms of an equivalent constant decibel level, or equivalent sound levels (Leq). Equivalent sound levels (Leq) are used to develop single-value descriptions of average noise exposure over a selected period (e.g., an hour or a day) of time. Such average noise exposure values often include additional weighting factors for annoyance potential attributable to time of day or other considerations. The most common averaging period is hourly, but L_{eq} can describe any series of noise events of any duration.

Because community receptors (e.g., residents, the infirm, convalescents, children) are more sensitive to unwanted noise during the evening and night, state law requires that nighttime noise be more heavily weighted than noise occurring during the day. To measure this noise variation during different times of the day, an artificial dB increment is added to quiet time noise levels for planning purposes in a 24-hour noise descriptor called the Community Noise Equivalency Level (CNEL). The CNEL takes average sound levels at an observation point and adds a weighting penalty to those sounds that occur during the evening and night hours. A penalty of 5 dBA is added between 7 PM and 10 PM , and a 10 dBA penalty is added between 10 PM and 7 AM. CNEL noise levels are often reported as 65 dB CNEL or 65 CNEL.

The Day/Night Average Sound Level, L_{dn} or DNL, is essentially the same as CNEL, with the exception that the evening time period is dropped and all occurrences during this three-hour period are grouped into the daytime period. DNL is calculated as the average A-weighted noise level during a 24-hour day, obtained after addition of 10 decibels to levels measured in the night between 10:00 pm and 7:00 am.

Noise Standards

State Standards

The State of California Building Code (CBC) establishes maximum acceptable interior noise level standards for residential structures. According to the CBC, interior noise levels attributable to exterior sources shall not exceed 45 dB DNL in any habitable room. Residential structures to be located where the noise level exceeds 60 dB DNL shall require an acoustical analysis showing that the proposed design will limit exterior noise to the prescribed allowable interior level.

Local Standards

All jurisdictions in the state of California are required to have a Noise Element in the General Plan. Such elements typically articulate noise exposure standards designed to insure that noise does not excessively impact the quality of life of its citizens. For noise sources amenable to local control, acceptable noise levels by land use is usually established and regulated by General Plan policy or city ordinance. These local controls limit the allowable noise levels at the property line from the noise source onsite. However, local jurisdictions are pre-empted from regulating the noise emissions, e.g., noise from vehicles, trains or airplanes.

Compatibility standards for noise and land use are included in the Noise Element of the City of Milpitas General Plan. Pursuant to the Noise Element, all new residential development (single family and multifamily) and lodging facilities must have interior noise levels of 45 dB DNL or less. Mechanical ventilation is required where use of windows for ventilation will result in higher than 45 dB DNL interior noise levels. For exterior noise levels for a single family residential use, up to a 60 db DNL is considered normally acceptable, up to 70 dB DNL is considered conditionally acceptable, and above 70 dB DNL

is considered normally unacceptable. For exterior noise levels for a multi-family residential land use, up to 65 dB DNL is considered normally acceptable, up to 70 dB DNL is considered conditionally acceptable, and above 70 dB DNL is considered normally unacceptable. For commercial land uses, an exterior noise level of up to 70 dB DNL is considered normally acceptable, up to 77 dB DNL is considered conditionally acceptable, and above 77 dB DNL is considered normally unacceptable.

Existing Noise Sources

Vehicular traffic is the predominant source of noise throughout the Project area. On the west side of the Project Site, noise generated along Interstate 880 dominates the noise environment. Noise generated along Abel Street dominates the noise environment at the east side of the Project area. Other noise sources in the vicinity of the Project Site include traffic noise generated along South Main Street, the Elmwood Correctional Facility public address system, intermittent sirens from the Milpitas Fire Department located near-by, and commercial aircraft traffic. Sensitive receptors in the vicinity of the Project include single-family residential housing to the north of the correctional facility and multi-family residential housing south of the eastern portion of the Project Site.

As part of the Noise Analysis, a noise monitoring survey was conducted February 9-11, 2004. Noise levels were monitored continuously over a 24-hour duration at three representative locations at the Project Site: (1) the northwest corner of the Elmwood Correctional Facility; (2) across Abel Street from the Correctional Facility; (3) the eastern property line of the Abel Street parcel. The Day-Night Level (DNL) was calculated for each 24-hour measurement. (Reference Figure 9, *Noise Measurement Locations at the Project Site.*)

At the northwest corner of the Elmwood Correctional Facility, the noise monitor recorded noise ranging from about 54 dBA to 63 dBA during the day, and from about 53 dBA to 63 dBA during the night. The daily average was 65 dB DNL.

At the second location across from Abel Street, the noise monitor recorded noise ranging from about 57 dBA to 62 dBA during daytime hours, and 50 dBA to 61 dBA at night. The daily average was 63 dB DNL.

At the third location on the eastern property line of the Abel Street parcel, a short-term measurement was taken about 140 feet from the centerline of South Main Street. This measurement was made to quantify the noise levels generated by vehicular traffic along South Main Street. The measured 10-minute L_{eq} was 60 dBA, while the maximum noise level was 74 dBA. The source of the maximum noise level was a southbound bus.

5.4.2 THRESHOLDS OF SIGNIFICANCE

Project impacts relative to noise are considered significant based on CEQA Guidelines and City Noise Element policies. These criteria include:

- Noise and Land Use Compatibility: A significant noise impact would be identified if exterior noise levels at residential areas on the Project Site would exceed 60 dB DNL for single-family or 65 dB DNL for multi-family.

- Substantial Increase to Noise Levels: The impact would be considered significant if Project-generated traffic increases noise levels at existing noise-sensitive receivers by 3 dB DNL or greater.

- Construction Noise: Construction activities produce temporary noise impacts. Since these impacts would be short-term and vary considerably day-to-day, they are evaluated somewhat differently than operational impacts. When construction activities are predicted to generate noise levels greater that 60 dBA $L_{eq(hr)}$, exceed ambient noise levels by 5 dBA or more, and cause prolonged interference with normal activities in noise-sensitive areas, the impact would be considered significant.

5.4.3 PROJECT IMPACTS

Noise and Land Use Compatibility

Portions of the proposed Project Site are located in a noise environment that exceeds the satisfactory noise level standard of 60 dB DNL for single family residential land uses and 65 dB DNL for multi-family residential land uses. These areas include the following:

Land East of Abel Street

(A) Outdoor Noise Environment

Podium style high-density residential development is proposed by the Project on the east side of Abel Street. The measured noise level east of Abel Street, 165 feet from the centerline of the roadway, was 63 dB DNL. At the facades of the proposed residential units overlooking Abel Street, the future noise level is calculated to be 68 dB DNL. Noise exposure in the outdoor areas on the podium around the buildings is calculated to be 60 to 65 dB DNL. Noise exposure in the outdoor areas around the buildings and at the pool area would be compatible for the proposed multi-family podium style development. The outdoor noise environment would, therefore, be compatible with the proposed high-density residential development.

A park is proposed on the eastern side of Able Street, adjacent to the podium style residential development. The frontage along Abel Street would experience a future noise exposure of 68 dB DNL, but the majority of the park would be exposed to noise levels between 60 and 65 dB DNL. The noise exposure at the park site would be compatible with the intended use.

(B) Indoor Noise Environment

Typical new residential construction provides about 15 decibels of noise reduction with windows partially open and about 25 decibels of noise reduction with windows closed. Interior noise levels in units facing Abel Street would be up to 52 dB DNL with windows partially open, exceeding both the CBC and City noise thresholds that establish 45 dB DNL as the acceptable level of interior noise for residential properties. This represents a potentially significant impact.

Land North of the Elmwood Correctional Facility

(A) Outdoor Noise Environment

Proposed land uses on the Project Site north of the Elmwood Correctional Facility are a mix of single-family detached housing and townhomes. This area is affected by noise from Abel Street and I-880. The Elmwood Correctional Facility, itself, was not identified during the noise monitoring survey as a significant source of community noise. There may be intermittent noises, but these are not expected to pose any constraint to the proposed residential development of the site. Such noises could include testing of emergency engine generators, vehicles circulating, voices. The existing and future noise exposure level in the western portion of the proposed development area is a DNL of 65 dB resulting from I-880. The noise level in outdoor activity areas would be considered acceptable based on the City's Noise and Land Use Compatibility Guidelines. Furthermore, once the commercial parcel is developed noise from I-880 will be lower due to additional shielding. Along Abel Street the nearest units are proposed about 200 feet from the roadway centerline where the existing and future noise exposure levels are expected to be about 62-63 dB DNL. The townhomes proposed in the eastern segment of the northern study area are, therefore, again compatible with the 65 dB threshold level. The single-family detached housing proposed in the center of the northern site would be buffered from vehicular traffic noise by the townhomes. Exterior noise exposure in this area is expected to be less than 60 dB DNL. It is, therefore, considered acceptable with respect to the City guidelines. Vehicular traffic noise would be acceptable in outdoor activity areas at the proposed residential development.

The area adjacent to I-880 is proposed for auto-related or other commercial development. This type of development is generally considered compatible adjacent to freeways. The proposed development may be a future source of noise which could affect the adjacent new residential development. Of particular concern would be intrusive noise sources such as public address systems that are often utilized at automobile dealerships. These noises

represent a potentially significant impact to the residential component proposed for the north side of the Project Site.

(B) Indoor Noise Environment

The townhome developments would be exposed to noise levels exceeding 60 dB DNL but not exceeding 65 dB DNL. Interior noise levels, with windows assumed open for ventilation, would therefore exceed the 45 dB DNL standards set forth in the Noise Element and the State Building Code. This is a potentially significant impact.

Traffic Noise Impact on Surrounding Areas

Traffic resulting from the proposed Project would not cause a substantial increase in noise levels at any noise sensitive receptors in the Project area adjoining the street network. This is a less than significant impact.

With development of the Project, traffic noise level along Abel Street is calculated to increase by 1 dB DNL. Such an increase is not substantial and would not cause a significant impact upon existing residents adjoining Abel Street. There are no other roadways in the Project vicinity with adjoining noise sensitive land uses that would experience a measurable increase in traffic noise as a result of Project generated traffic. Therefore, impacts from traffic noise generated by the Project would be less than significant.

Parking Lot Noise

The residential portion of the Project Site north of the Elmwood Correctional Facility adjoins an existing single-family residential neighborhood. As proposed, the Project residential development would place a circulation road and guest parking area along the north boundary, adjacent to the existing single family residential neighborhood. The circulation of vehicles, engine-starts, and car-door slamming, as well as conversations, would occur immediately adjacent to the residential neighbors to the north. Noise levels would be intermittently intrusive, but would not affect the day/night average level at the neighbors' homes. There would not be a substantial increase in the overall noise exposure level, but the character of the noise environment would be changed. This is a potentially significant impact.

Construction Noise Impact

Most Project construction activities would take place over a period of less than one year, and would include grading of the site, paving of roadways, construction of Project infrastructure, and construction of individual buildings. The highest noise levels would be generated during grading of the site, with lower noise levels occurring during building construction. Large -earth-moving equipment, such as graders, scrapers, and bulldozers,

generate maximum noise levels of 80 to 85 dBA at a distance of 100 feet. Typical hourly average construction-generated noise levels are about 75 to 80 dBA measured at a distance of 100 feet from the noise source during busy construction periods. These noise levels drop off at a rate of about 6 dBA per doubling of distance between the noise source and receptor. The closest existing noise sensitive land is the residential area located north of both residential sites and south of the Abel Street site. Existing ambient noise levels at adjacent residences range from approximately 54 to 63 dBA Leq. Construction noise levels at adjacent residences would intermittently exceed 60 dBA Leq and existing ambient levels by more than 5 dBA when construction occurred on the site. This represents a potentially significant short-term impact.

5.4.4 MITIGATION MEASURES

Mitigation for Noise and Land Use Compatibility

NOI-1: Prior to submittal of any building plans, the developer shall submit for review and approval of the City, a detailed analysis of noise exposure that identifies noise insulation features for units exposed to noise levels exceeding 60 dB DNL. The State of California Building Code (enforced by the City for all housing) requires that interior noise levels not exceed 45 dB DNL in all habitable rooms. In accordance with State Building Code requirements, the acoustical analysis shall indicate treatments necessary to maintain indoor noise levels at or below 45 dB L_{dn}. The developer shall incorporate these noise attenuation treatments as directed by the City.

NOI-2: Residences with direct exposure to Interstate 880 and Abel Street shall be provided with adequate forced air mechanical ventilation so windows may be kept closed at the discretion of the occupants to control noise intrusion. The following is a list of areas that would require mechanical ventilation.

- Units at the west side of the lot north of the correctional facility.
- Units at the north and south sides of the lot north of the correctional facility that are less than 1,200 feet from the I-880.
- Units at the east side of the lot north of the correctional facility and less than 250 from the centerline of Abel Street that are exposed to noise generated by Abel Street.
- All units located at the lot east of Abel Street and adjoining the street.

NOI-3: Prior to submittal of any building plans related to the commercial portion of the Project Site, the developer shall submit, for review and approval of the City, a noise attenuation plan to ensure compatibility of commercial uses with the adjacent residential development. Such controls may include, but are not limited to, noise barriers along the eastern property line north of the Hetch Hetchy right-of-way, site planning to minimize noise generating activities such as loading docks and repair facilities, etc. adjacent to the common residential property boundary. Such controls shall be sufficient to attenuate noise generated on the commercial site to less than 60 dB DNL at the adjoining residential site boundary.

Parking Noise

NOI-4: The developer shall construct a 6-foot high solid noise barrier fence along the northern Project Site boundary where it adjoins single-family residences. Such a noise barrier fence could be constructed of wood if air-tight with no cracks or gaps, or concrete panels, or concrete or masonry block. The minimum surface weight for the barrier shall be three pounds per square foot.

Construction Noise

NOI-5: During construction, the developer shall implement the following measures to reduce construction noise:

(g) Limit construction to the hours of 7:00 AM to 7:00 PM on weekdays, and 9:00 AM to 5:00 PM on Saturdays, with no noise-generating construction on Sundays or holidays.

(h) Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.

(i) Utilize quiet models of air compressors and other stationary noise sources where the technology exists.

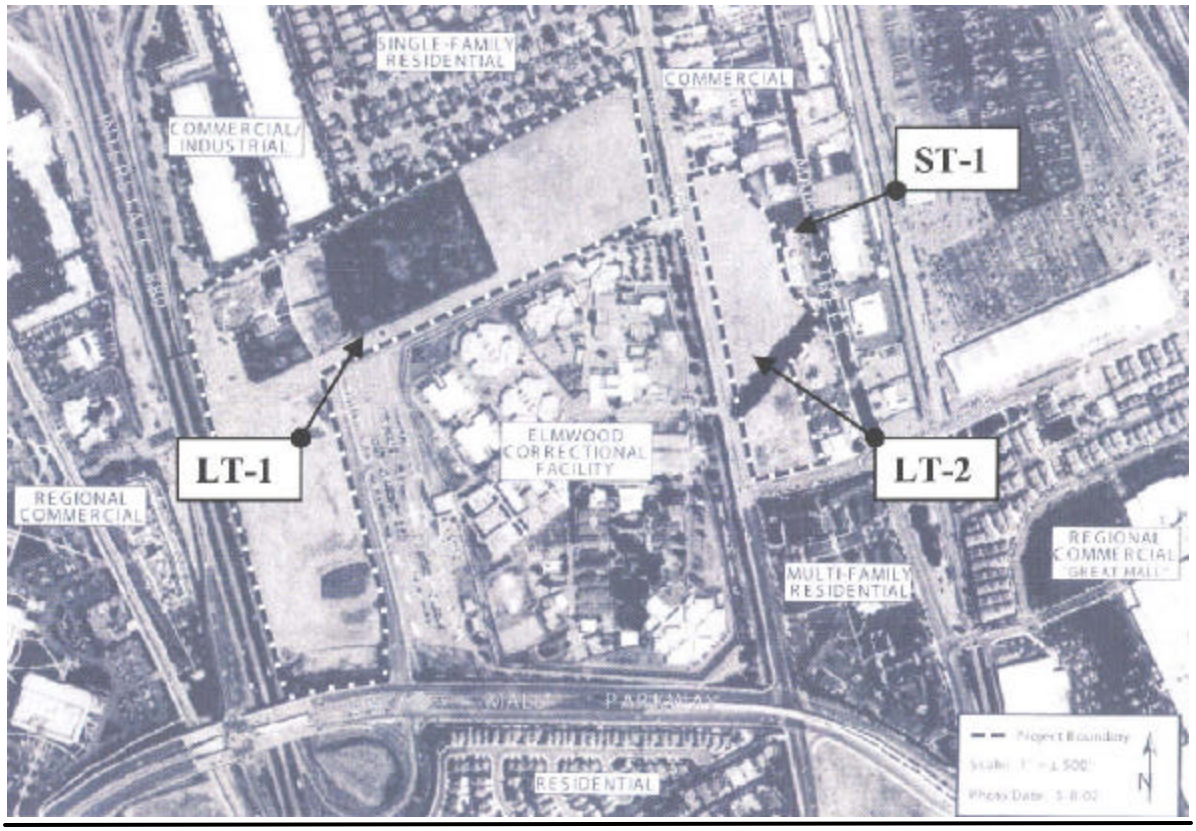
(j) Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction Project area.

(k) Prohibit unnecessary idling of internal combustion engine.

(l) Designate a noise disturbance coordinator who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site.

5.4.5 SIGNIFICANCE AFTER MITIGATION

Implementation of Mitigation Measures NOI-1 through NOI-5 is expected to reduce Project noise related impacts to less than significant levels.



Elmwood Residential & Commercial Development Project

NOISE MEASUREMENT LOCATIONS AT THE PROJECT SITE

Date: Sep 28, 2004

Figure 9

5.5 BIOLOGICAL RESOURCES

This section addresses issues related to existing plant and animal life currently found within and adjacent to the Project Site. Issues related to jurisdictional waters are also addressed. Potential Project impacts on these biological resources, and any mitigation measures necessary to resolve impacts are identified. Information referenced in this section was obtained from the *Biological Resources Section for the KB Home/Elwood Correctional Facility*, by Olberding Environmental, Inc., September 2004 (Biological Resources Study); *Burrowing Owl Survey for the Elmwood Property*, by Olberding Environmental, Inc., July 2004; and *Tree Report – Elmwood*, by HortScience, Inc., March 2004. These reports were prepared in support of the Project and subsequently reviewed and accepted by the City. (Full copies of the reports are contained in Appendices F-H.)

5.5.1 EXISTING CONDITIONS

Biotic Habitats

There are seven biotic habitats present on the Project Site, including non-native herbaceous field, landscaped/ornamental, developed, creek channel, drainage ditch, detention/settling basin, and isolated seasonal wetland. (See Figure 10, *Biotic Habitats on Project Site*.)Each habitat is described below

Non-native Herbaceous Field

Non-native herbaceous field habitat covers much of the former golf course and the adjacent disked fields, as well as a shallow drainage ditch that runs along the northern boundary of the site, leading to Penitencia Creek. Because of development and a regular program of disking, many disturbance-tolerant species, such as non-native grasses and invasive forbs (broad-leaved flowering plants), are found within these areas of the Project Site. The dominant grasses are Italian ryegrass, Mediterranean barley, and rabbit's foot grass. The dominant forbs include western marsh cudweed, bristly ox-tongue, horseweed, willow herb, and large patches of prickly lettuce.

The former golf course is dominated by hydrophytic (water-loving) plant species, likely resulting from leaking irrigation lines. This portion of the Project Site offers suitable habitat for several wildlife species in the form of cover, foraging and breeding habitat. Species such as the northern mockingbird, western scrub jay, and American robin likely forage within the grassland and herbaceous habitats of this area. Killdeer were present on the site and likely use the sand traps as breeding habitat. Mourning doves may also nest on the ground. The Black-tailed hare, California ground squirrel and Botta's pocket gopher were also observed.

The disked areas of the Project Site have been cultivated for various agricultural uses over the past half-century. These areas have been subject to annual and potentially bi-annual disturbance for many years. Currently, the plant species found in the disked fields consist of rip-gut brome, wild oat, soft chess, Italian rye, field mustard, wild radish, spikeweed, and shining peppergrass. Alkali mallow and field bindweed were observed to germinate and grow in the field after disking had occurred on the Project Site.

The disked fields provide important foraging habitat for a variety of species. Aerial insectivores and raptor species were observed nesting and foraging in the disked fields. Ground squirrel burrows are present in some areas of the disked fields, however their numbers, and those of other fossorial (burrowing) mammals, are probably limited by disking activity. Gopher snake and western fence lizard were present in this area as well.

Other mammals that likely utilize this habitat include the black-tailed hare, deer mouse, and roof rat.

Landscaped/Ornamental

Landscaped areas are characterized by ornamental trees with a grassy understory where disking or mowing has not been conducted. The eastern portion of the Project Site (east of Abel Street) is bisected by a double row of elm trees (see Tree Resources discussion, below). A mixed stand of redwood and oleander trees runs along the border of the site with Interstate 880. Pine, elm, blue gum and cypress trees are planted along a drainage ditch that leads to Coyote Creek.

Eucalyptus and elm trees provide important roost sites, perches, and nest sites for a number of bird species including the white-tailed kite, red-tailed hawk, red-shallered hawk, and American kestrel. Smaller trees and shrubs may be used as nesting and foraging habitat by such species as the yellow-rumped warbler, northern mockingbird, and American robin.

Developed

Developed areas include the former golf course facility and a portion of the Project Site east of Abel Street, which is disturbed with various dumped materials including wood chips, fill dirt, and gravel. Ornamental species within the former golf course include iris, pennisetum, lantana, date palm, and pampas grass. In the absence of regular landscape maintenance, rattail fescue and coyote brush have become established as well. A miniature golf pool, filled with water, is matted with algae and contains a patch of cattail. Vegetation east of Abel Street consists of Italian thistle, prickly lettuce, and black mustard.

Shrubs and small ornamental trees on the former golf course facilities provide cover and breeding habitat for a variety of urban adapted wildlife species such as the northern mockingbird, bushtit, and California towhee. Emergent vegetation found in the flooded pools of the golf course may provide foraging and breeding habitat for Pacific tree frog,

while surrounding dense ornamental vegetation may provide cover and foraging habitat for the western fence lizard. Mammal species that likely occur in developed areas include California ground squirrel, Botta's pocket gopher, and roof rat.

Penitencia Creek Channel

Penitencia Creek runs along the west edge of Abel Street through the Project Site, and is defined by engineered slopes and a flat linear channel. It is tributary to Coyote Creek approximately two miles downstream. Vegetation on the slopes of the creek includes non-native herbaceous forbs and annuals grasses. The vegetation on the slopes of the channel is mowed annually. The vegetation along the edge of the channel at the low flow line is composed of perennial herbaceous species such as umbrella sedge, Dallis grass, and cattail.

Water moves from stormdrains into the Penitencia Creek channel providing almost year-round water flows through the system. Wading bird species, such as the green heron and snowy egret, and waterfowl, such as the mallard and American coot, are likely to use Penitencia Creek as foraging habitat.

Drainage Ditches

Northern Drainage Ditch

A linear drainage along the north boundary of the former golf course site is a graded v-shaped ditch that originates at the east end of a former golf driving range where a corrugated metal culvert pipe emerges into the shallow earthen ditch. The water from this drainage flows to Penitencia Creek to the east through a flap gate structure. This ditch was constructed to direct irrigation runoff from the driving range into Penitencia Creek. This ditch contains patches of cattail and golden dock. In addition, alkali mallow was observed to germinate and grow in this ditch.

Freeway Drainage Ditch

Another drainage ditch is located outside, but directly northwest of the Project Site. This drainage ditch follows I-880 along the entire length of the Project Site, for 1,884 linear feet. The surface area amounts to 0.13 acres. The ditch is approximately three feet wide and incised with a drop of up to three feet from the freeway edge. Freeway runoff that enters this ditch flows south towards Great Mall Parkway and the large detention/settling basin (described below). No water was observed in the ditch during December 2003 and January 2004 surveys, which were conducted in support of the Biological Resources Study shortly after rainfall events. This drainage ditch is characterized by annual grassland vegetation. Species found include wild oat, rip gut brome, and soft chess. The bottom of the ditch was vegetated with upland grasses including the aforementioned species, Italian rye grass, saltgrass, and goosefoot.

Neither of the drainage ditches offer cover for wildlife. When inundated, the ditches may provide suitable habitat for Pacific tree frogs and aquatic invertebrates. Waterfowl and wading species such as great egret and snowy egret may forage in this type of habitat.

Detention/Settling Basin

The constructed detention/settling basin located adjacent to the northern boundary of the Elmwood Correctional Facility consists of a large shallow area that holds surface runoff. Three large box culverts extending under Great Mall Parkway and the Elmwood Access Road were constructed to convey 100-year flood flows from areas to the south of Great Mall onto this portion of the site. The feature covers approximately 32,800 square feet, or approximately 0.75 acre and consists of a large shallow area that holds up to one foot of water. The basin is connected to several large drainage inlet culverts located beneath Elmwood Road. The culverts are connected to a similar detention/settling basin area on the east side of the road (off-site). The basin was inundated and saturated shortly after December 2003 and January 2004 rainfall events. The detention/settling basin supports seasonal and perennial wetland vegetation composed of rabbit's foot grass, Italian rye grass, alkali bulrush, umbrella sedge, and cattails. The majority of vegetation was found on the periphery of the basin in the more shallow inundated regions.

The open water habitat provided within the detention/settling basin is highly suitable habitat for ducks and wading bird species. Wading birds, as well as mallards, northern pintails, northern shovelers, and cliff swallow and white-throated swift colonies may use this area for foraging. The basin may also attract shorebird species such as western and least sandpipers.

Isolated Seasonal Wetland

An isolated seasonal wetland is located in a topographical depression between the berm surrounding the detention/settling basin and a temporary stockpile (removed material from the basin). It appears that the temporary stockpile is blocking the normal direction of surface flow, causing stormwater to pond behind the stockpile. This feature covers approximately 15,600 square feet or 0.358 acre. This area was inundated and saturated at the time of the December 2003 survey. The isolated seasonal wetland supports vegetation primarily composed of weedy wetland species. Plants such as alkali mallow, Mediterranean barley, horseweed, willow herb and other annual grasses and forbs were observed.

The isolated seasonal wetland is regularly disked, which greatly decreases its value to wildlife as wetland vegetation cannot become established to provide food and cover. During winter inundation, the same species found within the settling basin use the wetland for foraging. Birds likely move between the two features as insects become available in respective wetland areas.

Special Status Plant and Wildlife Species

Several plant and animal species known to occur in the vicinity of the Project Site have been given special status under federal or state endangered species legislation or otherwise have been designated as sensitive by state resource agencies or professional organizations whose lists are recognized by responding agencies when reviewing environmental documents. Such species are referred to collectively as "species of special status."

Special Status Plant Species

Several special status plant species have been known to occur or have the potential to occur in the Project vicinity. These species include alkali milk-vetch, San Joaquin spearscale, Congdon's tarplant, Contra Costa goldfields, Prostrate navarretia, California seablite, Robust spineflower, Point Reyes bird's-beak Fragrant Fritillary, and Hairless Popcorn-flower. These species are described below and summarized in Table 9.

Alkali milk-vetch is a California Native Plant Society (CNPS) List 1B plant (plants rare, threatened or endangered species in California and elsewhere). It has no federal or state listing status. Alkali milk-vetch is an herbaceous annual that is a member of the pea family. Generally, this plant is low growing and occurs within seasonal wetland, alkali sink, and salt marsh habitats. Alkali milkvetch is known to grow specifically within annual grassland components of the upper zones of saline soils that are intermittently flooded. In addition, alkali milk-vetch may be observed in the upper zones of vernal pools and swales with alkaline soil conditions.

The Project Site is in the known range for this species and while artificial in origin, the detention/settling basin could be potentially suitable habitat for this species. The most recent occurrence in the Project vicinity was in 2001 at the Pacific Commons Preserve in Fremont, approximately six miles northwest of the Project Site. The last Bay Area collection prior to the 2001 occurrence, however, was made in 1959 and the species may have been extirpated throughout much of its former range. This species was not observed during surveys performed July 2003 through August 2004.

San Joaquin Spearscale is a California Native Plant Society (CNPS) List 1B plant and has no federal or state listing status. San Joaquin spearscale is in the Goosefoot family. It grows in alkali wetlands and sinks, chenopod scrub, meadows, playas, and in valley and foothill grasslands. The blooming period for this species is April through October.

San Joaquin spearscale is presumed extirpated from Santa Clara County. The most recent occurrence of this species was in 2001 at Pacific Commons Preserve in Fremont, approximately six miles northwest of the Project Site. The Project Site, specifically the periphery of the detention/settling basin, is potential habitat for this species. This species was not observed during surveys performed July 2003 through August 2004. Surveys were performed during the appropriate blooming period for this species. Therefore, San Joaquin spearscale is assumed to be absent from the Property.

Congdon's Tarplant is a California Native Plant Society (CNPS) List 1B plant and has no federal or state listing status. Congdon's tarplant is a member of the sunflower family and is one of four subspecies of Parry's tarplant. Congdon's tarplant is a prostrate to erect, annual herb with rigidly spine-tipped leaves and yellow ray- and disk-flowers (head). Congdon's tarplant occurs in valley and foothill grasslands in moist alkaline soils and blooms between June and November.

There are multiple occurrences of this species within the Milpitas area. It has been reported as recently as 2002 in Sunnyvale Baylands in Sunnyvale, approximately five miles west of the Project Site. The ruderal grassland and herbaceous annual habitat provides marginally suitable conditions to support this plant. In the absence of disking, it is possible this species could occur on the Project Site. The habitat within the detention/settling basin may be potentially suitable habitat for this plant species. This species was not observed during surveys performed July 2003 through August 2004. Surveys were performed during the appropriate blooming period for this species. Therefore, Congdon's tarplant is assumed to be absent from the Property.

California Seablite is a CNPS List 1B species. It is listed as endangered by the USFWS but has no special status listing in California. Historically, this species was distributed in Alameda, Santa Clara and San Luis Obispo Counties, however it is now considered extirpated in all counties but San Luis Obispo. The most recent recorded occurrence of this species was in 1986, north of Mud Slough in Fremont, approximately 4.5 miles northwest of the development property.

California seablite is a member of the Goosefoot family (Chenopodiaceae). It occurs in coastal marshes and swamps and its blooming period is from July through October. It is presumed absent from the site due to a lack of suitable habitat to sustain the species. This species was not observed during surveys performed July 2003 through August 2004. Surveys were performed during the appropriate blooming period for this species. Therefore, California seablite is assumed to be absent from the Property.

Robust Spineflower is a CNPS List 1B species from the Buckwheat family (Polygonaceae). It is listed as an endangered species by USFWS but has no special status in California. It is considered extirpated from much of its former range, which included Alameda, Monterey, Santa Clara, Sacramento and San Mateo counties although populations do exist in Santa Cruz and Monterey counties. The most recent occurrence of this species was in 1882 in east San Jose approximately 6 miles south of the development property.

Robust spineflower is an annual herb that exhibits grayish, soft, and hairy stems with very small white to rose colored flowers. This species occurs in cismontane woodland, coastal dunes, and coastal scrub in sandy or gravelly soil. It is presumed absent from the site due to a lack of suitable soils and a lack of recent occurrences of this species within the development property vicinity. This species was not observed during surveys performed July 2003 through August 2004. Surveys were performed during the appropriate blooming period for this species. Therefore, robust spineflower is assumed to be absent from the Property.

Point Reyes Bird's-beak is on CNPS List 1A and has no state of federal listing status. Its historical distribution includes Alameda, Humboldt, Marin, Santa Clara, San Mateo, and Sonoma counties. It is considered extirpated from Alameda, San Mateo and Santa Clara counties. It was last observed in 1905 in the town of Alviso, approximately 3 miles west of the site.

Point Reyes bird's beak occurs in salt marshes and swamps and blooms from June to October. Whitish, bilateral flowers may be observed on flowering stalks between three to twelve inches in height. Point Reyes bird's-beak can be found in diked salt marsh habitat as well as the upper edges of coast salt marsh. This plant unusually is found where the high to highest flood water occurs. As water levels rise the seeds from this plant are transported to the drift line areas where they germinate while floating then settle to grow as the water recedes. It is presumed absent from the site due to a lack of suitable habitat and because of a lack of recent occurrences in the vicinity of the development property. This species was not observed during surveys performed July 2003 through August 2004. Surveys were performed during the appropriate blooming period for this species. Therefore, Point Reyes bird's beak is assumed to be absent from the Property.

Contra Costa Goldfields is a California Native Plant Society (CNPS) List 1B plant and is listed as endangered by the USFWS, but has no special status in California. Contra Costa goldfields is a member of the sunflower family and exhibits small yellow flowers in early to mid-spring. This plant is found in vernal pools, depressions or seasonal wetland areas. In general, Contra Costa goldfields occur in cismontane woodlands, playas, valley and foothill grassland, and mesic vernal pools in alkaline soils.

There is a report of an occurrence of this species in 2001 in Fremont, approximately six miles northwest of the Project Site. The seasonal wetland habitat present in the detention/settling basin is potentially suitable habitat for this plant species. This species was not observed during surveys performed July 2003 through August 2004.

Prostrate Navarretia is a California Native Plant Society (CNPS) List 1B plant and has no federal or state listing status. Prostrate navarretia is known to occur in coastal scrub, valley and foothill grasslands, and mesic vernal pools in alkaline soils. This species blooms between April and July.

In 2001, two occurrences of prostrate navarretia at Pacific Commons Preserve in Fremont, approximately six miles northwest of the Project Site, were reported. Moderately suitable conditions exist for this species within the Project Site; however, it is unlikely to occur due to regular disking. This species was not observed during surveys performed July 2003 through August 2004. Surveys were performed during the appropriate blooming period for this species. Therefore, Prostrate navarretia is assumed to be absent from the Property.

Fragrant Fritillary is on CNPS List 1B. It has no state listing-status but is a federal species of concern. This species is known from the majority of the Bay Area counties, but is severely threatened by grazing and the loss of habitat to agriculture and urban development. The closest known population to the development property was recorded in the early 1990s

from the vicinity of San Jose (near the community of Evergreen), a few miles south of the development property.

Fragrant fritillary, a member of the lily family (*Liliaceae*), occurs in grassy, often disturbed areas both inland and in coastal areas on serpentine and non-serpentine soils. It blooms in the early spring (February-April). Potentially suitable habitat for fragrant fritillary is available in the grassland habitat covering the site. This species was not observed during surveys performed July 2003 through August 2004.

Hairless Popcorn-flower is on CNPS List 1A (considered extinct), but it is considered extant (not extinct) by CDFG. It has no state or federal listing-status. Historically, it occurred in Alameda, Merced, Marin, San Benito, and Santa Clara counties, but since 1930 most collection sites have been located only in the Hollister area (San Benito County). Occurrences near the development property in Santa Clara and Alameda counties are recorded from the 1890s, except one from 1955.

Hairless popcorn-flower, a member of the borage family (Boraginaceae), occurs in wet, alkaline soils in meadows and valleys. Potentially suitable habitat is present on the site in the wetland areas to the south. Hairless popcorn-flower is an annual species that blooms in April and. It is highly unlikely that this popcorn-flower is present on the site because it has not been recently observed and is considered extinct by some botanists. Therefore, this species is presumed absent from the site. This species was not observed during surveys performed July 2003 through August 2004.

TABLE 9 SPECIAL STATUS PLANT SPECIES WITH POTENTIAL TO OCCUR IN THE PROJECT VICINITY

Common Name	Status	Habitat	Blooming period/ Period Identifiable
Alkali milk-vetch	Rare, threatened or endangered in California and elsewhere	Alkaline or adobe clay soil, playas, valley and foothill grassland, vernal pools	March - June
San Joaquin spearscale	Rare, threatened or endangered in California and elsewhere	Alkaline soil, chenopod scrub, meadows, playas, valley and foothill grassland	April – October
Congdon's tarplant	Rare, threatened or endangered in California and elsewhere	Valley and foothill grassland, moist alkaline soils	June – November
Robust spineflower	Endangered species; rare, threatened or endangered in California and elsewhere	Cismontane woodland, coastal dunes, coastal scrub in sandy or gravelly soil	April – September

Point Reyes bird's-beak	Rare, threatened or endangered in California and elsewhere	Coastal salt marshes and swamps	June – October
Contra Costa goldfields	Endangered species; rare, threatened or endangered in California and elsewhere	Cismontane woodland, playas, valley and foothill grassland, mesic vernal pools in alkaline soils	March – June
Prostrate navarretia	Rare, threatened or endangered in California and elsewhere	Coastal scrub, valley and foothill grassland, mesic vernal pools in alkaline soils	April – July
California seablite	Endangered species; rare, threatened or endangered in California and elsewhere	Marshes and swamps	July - October

Special Status Wildlife Species

Several special status wildlife species have the potential to occur in the Project area, based on available habitat. These species include Chinook salmon, Central Valley steelhead, vernal pool tadpole shrimp, California tiger salamander, red-tailed hawk and red-shallered hawk, American kestrel, northern harrier and loggerhead shrike, white-tailed kite, burrowing owl, and pallid bat and are described below.

Special Status Fish

Chinook Salmon The Central Valley spring-run Chinook salmon is listed as threatened in the State of California and under the Endangered Species Act (ESA). The Sacramento River winter-run Chinook salmon is listed as endangered in the State of California and under the ESA. The Central Valley Evolutionarily Significant Unit (ESU) includes populations in the Sacramento River Basin. Critical habitat includes all rivers accessible to Chinook salmon in the Sacramento River and its tributaries and rivers and estuarine areas of the Sacramento and San Joaquin Delta in the state of California. All waters from Chipps Island to Carquinez Bridge, and all waters of San Pablo Bay west of the Carquinez Bridge and all waters of San Francisco Bay, north of the San Francisco/Oakland Bay Bridge are also included. The Sacramento River ESU includes the Sacramento River population in California's Central Valley. Critical habitat includes the Sacramento River between Kiswick Dam to Chipps Island, all waters from Chipps Island to the Carquinez Bridge, and all waters of San Pablo Bay west of the Carquinez Bridge, and all waters of San Francisco Bay north of the San Francisco/Oakland Bay Bridge. Historically Chinook salmon were found from Point Hope, Alaska to the Ventura River in southern California. These fish spend part of their life cycle in freshwater, and part in ocean water.

Threats to these species include damming of rivers, increases in water temperature and sedimentation associated with modification of natural flow regimes, degradation of water

quality associated with agriculture, mining and recreational use of water, and the introduction of non-native species.

Chinook Salmon are not known to occur in Penitencia Creek. There have been recorded sightings in Coyote Creek, which is located two miles downstream from the Project Site. It is unlikely that Chinook salmon occur in the channel adjacent to the site. Chinook salmon are not likely to spawn in the reach of the Penitencia Creek adjacent to the site, because of the presence of fine sediments in the channel bottom and lack of habitat features. This species was not observed during surveys performed July 2003 through January 2004.

Central Valley Steelhead are listed as threatened under the ESA. This ESA includes the population of the Sacramento and San Joaquin River in the central valley of California. Critical habitat includes all rivers accessible to steelhead in the Sacramento and San Joaquin rivers and their tributaries in the state of California. Rivers and estuaries of the Sacramento and San Joaquin Delta and all waters from Chipps Island to Carquinez Bridge, and waters of San Pablo Bay to the Carquinez Bridge, and all waters of San Francisco Bay, north of the San Francisco/Oakland Bay Bridge are also included. Historical distributions of Central Valley steelhead included most of the tributaries of the Sacramento and San Joaquin rivers.

Two life history forms of this species include the anadromous form, which spends part of its time in freshwater and part in the ocean, and the freshwater resident form, known as the rainbow trout. Spawning occurs in cool streams with low turbidity, and suitable sites for egg deposition.

As with Chinook salmon, threats to this species include damming, degradation of water quality and introduction of non-native species.

Steelhead are known to be present in Coyote Creek. The CNDDB reports that spawning occurs in gravel substrates in nontidal reaches of Coyote Creek upstream of the confluence with Penitencia Creek. Steelhead are not likely to spawn in the reach of the Penitencia Creek adjacent to the development property because of the presence of fine sediments in the channel bottom and lack of habitat features. It is unlikely that steelhead occur in the channel adjacent to the Project Site. This species was not observed during surveys performed July 2003 through January 2004.

Special Status Arthropods

Vernal Pool Tadpole Shrimp is listed as an endangered species by the USFWS. It has no special status in the state of California. Vernal pool tadpole shrimp occur in vernal pools, grass-bottomed swales, and even water-filled vehicle tracks in clear to turbid waters. Vernal pool tadpole shrimp are known to occur within a six-mile radius of the Project Site.

While the detention/settling basin and isolated seasonal wetland habitats on-site represent potentially suitable habitat for this species, they are considered unlikely vernal pool tadpole

shrimp habitats due to their recent excavation from former uplands, their disturbed nature, and because soils found on the on-site wetlands are not typical vernal pool soils. This species was not observed during surveys performed July 2003 through January 2004. For these reasons, the Project Site is not expected to support Vernal Pool Tadpole Shrimp.

Special Status Amphibian

California Tiger Salamander (CTS) is listed as a federally threatened species by the USFWS in California, and is listed under the California Department of Fish and Game (CDFG) regulations as a species of special concern. This species typically breeds in vernal pools and other similar seasonal wetlands and will aestivate in the burrows of California ground squirrels. Potential aestivation habitat, in the form of ground squirrel burrows can be found throughout the Project Site, although these burrows are seasonally destroyed when disking occurs.

CTS have been known to occur at several locations within a five-mile radius of the Project Site. The most recent reported occurrence was in 2001 along Toregas Creek in Fremont, approximately four miles northeast of the Project Site. Although appropriate habitat for CTS occurs on the Project Site, this species is unlikely to occur due to the highly disturbed nature of the site resulting from regular disking that has occurred over 10 years. In addition, the Project Site is isolated from other potential CTS habitat and no means of dispersal exists to reach the site. This species was not observed during surveys performed July 2003 through January 2004. This species is presumed absent from the Project Site due to the absence of suitable aestivation habitat, the lack of breeding habitat, and the absence of dispersal corridors.

Special Status Reptiles

Southwestern pond turtle is a federal species of concern. It is a state species of special concern and a state protected species. Pond turtles occur in ponds, marshes, rivers, streams, and irrigation ditches that typically have rocky or muddy bottoms and are vegetated with aquatic plants. The southwestern pond turtle occurs south of the San Francisco Bay and Sacramento/San Joaquin River Delta.

Pond turtles were not observed on the site during surveys performed in 2003 and 2004 and are not expected to occur on the site because of the absence of streams or impoundments that support tall aquatic plants, such as cattails. Annual disking and continual disturbance of the adjacent upland habitats to Penitencia Creek would make these areas unsuitable for pond turtles.

Special Status Birds

Red-Tailed Hawk and **Red-Shallered Hawk** are protected species in the state of California by CDFG. The red-tailed hawk is a large buteo that is distinct due to the red color of its tail feathers in contrast to the brown color of its body. Not all red-tailed hawks exhibit the distinct coloration on their tail and gradations may occur especially in young birds. Red-tailed hawks hunt rodents by flying over grasslands, ruderal vegetation, and other urbanized habitats.

The red-shallered hawk is a medium-sized, slender buteo with long legs and a long tail and is smaller than the red-tailed hawk. Upperparts of this species are dark with pale spotting, and rusty-reddish feathers on the wing create the species' distinctive shaller patch. The tail has several wide, dark bars, intervening narrow stripes and a white-tipped tail. In the west, the red-shaller hawk occurs in riparian areas, and it has expanded its range of occupied habitats to include various woodlands, including stands of eucalyptus trees amid urban development.

Red-tailed and red-shallered hawks usually nest in tall trees with a well-developed canopy that include a strong branching structure to build a nest. Potential nesting habitat in the form of tall eucalyptus, redwood, and elm trees can be found in the landscaped habitats on the Project Site. Foraging habitat also exists within the development property. This species was not observed during surveys performed July 2003 through January 2004.

American Kestrel is protected by CDFG codes and is protected in the state of California. The American kestrel is the smallest of raptor species and is distinct due to its diminutive size and black barring on its head. Kestrels utilize cavities in trees for nesting and hunt small rodents and small birds. Foraging habitat exists in the Project area for kestrels and potential nesting habitat exists among the rows of elm trees. This species was not observed during surveys performed July 2003 through January 2004.

Northern Harrier and **Loggerhead Shrike** are both California species of special concern and are protected by CDFG code. Neither species were observed on the Project Site during surveys conducted in July 2002, however, suitable breeding, foraging, and nesting habitats are present on the Project Site in the form of non-native herbaceous vegetation including grasslands, and small shrubs. This species was not observed during surveys performed July 2003 through January 2004.

White-tailed Kite is protected under CDFG codes. The white-tail kite is falcon-shaped with a long white tail. This raptor has black patches on the shallers that are highly visible while the bird is flying or perching. This species was not observed during surveys of the site; however, existing trees on-site are potentially suitable breeding habitat for this species. In addition, herbaceous field habitat is suitable foraging habitat for the white-tailed kite. This species was not observed during surveys performed July 2003 through January 2004.

Burrowing Owl is a California species of special concern and is protected under the federal Migratory Bird Treaty Act. Burrowing owls are a small burrow-dwelling resident of dry, open grassland and desert habitats, nesting in areas of low shrubs or short grasslands. Burrowing owls are also known to inhabit the burrows of ground squirrels. The burrowing owl is mostly insectivorous, but they also consume small rodents and mammals. The breeding season for burrowing owls runs from February to August with the peak of breeding occurring in April and May.

Burrowing owls have been documented as using the Project Site over the past several years and are known to use nearby grassland habitats. Dozens of ground squirrels and many potential burrow sites were observed on the Project Site.

In a survey conducted in July 2003, twelve burrowing owls were observed on and adjacent to northwestern and western portions of the Project Site. (Reference Figure 11, Locations of Burrowing Owls.) Six active burrows containing numerous castings, droppings, and feathers were observed. One burrow supported two adults and four juveniles, four burrows were identified as likely nesting sites due to the presence of one or two owls, and one burrow site was occupied by an owl whose nest site was previously disturbed.

An active colony of burrowing owls occupies the Project Site. The site comprises one of the few suitable owl habitats on the valley floor in the Santa Clara Valley that can still support a relatively large population of burrowing owls. Remaining open space in the Santa Clara Valley is largely limited to habitats that are not suitable for burrowing owls or that have been approved for development.

Tricolored blackbird is a California species of special concern and a federal species of concern. Tricolored blackbirds are highly colonial and nomadic and are largely endemic to the lowlands of California. They prefer to nest in freshwater marshes with dense growths of emergent vegetation, but will nest in upland locations that support dense stands of herbaceous vegetation, especially plant species that are armed with thorns or spines. They nest from mid-April through mid-July.

A small colony of tricolored blackbirds was recorded in the Coyote Creek percolation ponds, approximately 2.5 miles northwest of the site in 1983. No breeding habitat is present on the property for this species. The ruderal fields on the property provide potentially suitable foraging habitat for tricolored blackbirds during the breeding and non-breeding seasons. This species was not observed during surveys performed July 2003 through January 2004.

Special Status Mammals

Pallid Bat is a species of special concern in California. They roost in buildings, rocky outcrops and crevices in mines and caves. Pallid bats are known to forage over a variety of habitats. There is one nearby colony of pallid bats in the Berryessa area, located approximately two miles from the Project Site.

Although there is no appropriate breeding habitat for the pallid bat within the Project area, they may find suitable roosting opportunities in the larger structures on the site. This species was not observed during surveys performed July 2003 through January 2004.

Biological Resources Regulatory Agencies

U.S. Army Corps of Engineers (Corps)

The federal government, acting through the Corps and the Environmental Protection Agency (EPA), has jurisdiction over all "waters of the United States" as authorized by §404 of the Clean Water Act (CWA) and §10 of the Rivers and Harbors Act of 1899 (33 CFR Parts 320-330). Projects that cause the discharge of dredged or fill material into waters of the United States require permitting by the Corps. Actions affecting small areas of jurisdictional waters of the United States may qualify for a Nationwide Permit (NWP), provided conditions of the permit are met, such as avoiding impacts to threatened or endangered species or to important cultural sites. Projects that affect larger areas or which do not meet the conditions of an NWP require an Individual Permit.

Waters of the United States are classified as wetlands, navigable waters, or other waters. Wetlands are transitional habitats between upland terrestrial areas and deeper aquatic habitats such as rivers and lakes. Due to the seasonal nature of rainfall in California, some wetlands may experience soil saturation for only a few weeks out of the year. Wetlands are identified by the presence of hydrophytic vegetation, hydric soils, and wetland hydrology. Swamps, marshes, bogs, fens and estuaries are all defined as wetlands, as are seasonally-saturated or inundated areas such as vernal pools, alkali wetlands, seeps, and springs. In addition, portions of the riparian habitat along a river or stream may be a wetland where the riparian vegetation is at or below the ordinary high water mark and thus also meets the wetland hydrology and hydric soil criteria.

Non-jurisdictional waters include non-tidal drainage and irrigation ditches excavated on dry land, artificially-irrigated areas, artificial lakes or ponds used for irrigation or stock watering, small artificial water bodies such swimming pools, and water-filled depressions. The Corps, however, reserves the right on a case-by-case basis to determine that a particular water body within these categories can be regulated as jurisdictional water. The EPA also has authority to determine jurisdictional waters of the U.S. on a case-by-case basis. Riparian habitat that is above the ordinary high water mark and does not meet the three-parameter criteria for a wetland, would not be regulated as jurisdictional waters of the United States.

The Corps regulates activities within jurisdictional waters. The placement of fill into such waters must comply with permit requirements of the Corps. Such permits are typically issued on the conditions that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values.

Regional Water Quality Control Board

The Regional Water Quality Control Board (RWQCB) regulates activities in wetlands and other waters through §401 of the Clean Water Act. Section 401 requires a state water quality certification for Project s subject to 404 regulations. Requirements of the certification include mitigation for loss of wetland habitat. In the San Francisco Bay region, the RWQCB may take the lead over the Corps in determining wetland mitigation requirements.

California Department of Fish and Game

California Fish and Game Code §§1600-1607 requires that the CDFG be notified of any activity that could affect the bank or bed of any stream that has value to fish and wildlife. Upon notification, the CDFG has the discretion to execute a Streambed Alteration Agreement. In practice, CDFG authority is extended to any "blue line" stream shown on a USGS topographic map, as well as unmapped channels with a definable bank and bed. Wetlands, as defined by the Corps, need not be present for CDFG to exert authority.

Wetlands and Jurisdictional Waters on the Project Site

Wetlands

Field surveys were conducted on December 15, 2003, and January 7, 2004, for the purpose of identifying the extent of Corps jurisdiction within the boundaries of the Project Site. The limits of jurisdictional wetlands were defined in accordance with Corps regulations and the required methodology outlined in the 1987 U.S. Army Corps of Engineers' Wetlands Delineation Manual. The actual determination of jurisdictional waters was made by the Corps, based on the delineation prepared by *Olberding Environmental* and verified in a letter from the Corps dated July 22, 2004[10].

Based on the field study and the wetland delineation study, a total of 1.113 acres exhibited characteristics typically associated with wetlands. The on-site areas containing positive indicators of wetland soils, hydrology and vegetation were located within the constructed detention/settling basin and isolated wetland at the southern portion of the Project Site, west of the Elmwood Rehabilitation Facility.

[10] Letter from Corps available at City of Milpitas Planning Division offices.

TABLE 10 PROJECT SITE WETLANDS	
Wetland Number and Location	**Acreage of Wetland**
Detention/Settling Basin	0.750
Isolated Feature at southern portion	0.363
Total	**1.113**

Both of these wetland areas are unregulated by the Corps, because they qualify for several exemption categories. The detention/settling basin was excavated on dry land for the purpose of stormwater runoff detention; this area was not historically linked to a channel or drainage area; and it consisted of an upland position prior to basin construction. Features such as this are generally considered nontidal drainages. Consequently, this wetland area is not expected to fall within the jurisdiction of the Corps and would be exempt from regulation.

The isolated wetland feature is also exempt from Corps regulation due to its creation through construction activity on the Property. This wetland was created incidental to the redistribution of excavated soil material removed during the construction of the detention/settling basin. The stockpile material has been temporarily placed at its present location pending approval to redistribute it across the remainder of the Property. In doing so, placement of the stockpile on the gently sloped topography currently blocks the natural flow of precipitation runoff causing a seasonal pond to form behind the pile. Features such as this are generally considered water-filled depressions. Consequently, this wetland area is not expected to fall within the jurisdiction of the Corps and would be exempt from regulation.

While exempt from Corps regulations, the RWQCB would have regulatory jurisdiction over the detention/settling basin and the isolated wetland as a "water of the State."

The drainage ditch from the Golf Course to Penitencia Creek and the ditch that is parallel to Interstate 880 are both exempt from Corps regulations, because they are ditches excavated an upland area solely for the purpose of irrigation drainage from the golf course area and for freeway runoff control, respectively.

Jurisdictional Waters

Penitencia Creek, located on the west side of Abel Street, is considered jurisdictional waters of the U.S. The section of Penitencia Creek within the Project Site totals 0.40 acre, as verified by the Corps on July 22, 2004. Vegetation in the channel includes sparse annual grasses and forbs.

The Creek is an active channel that supports year round water flows, which are tributary to the San Francisco Bay. Other regulatory agencies that impose jurisdiction within the

Penitencia Creek channel include the RWQCB, CDFG and the Santa Clara Valley Water District (SCVWD).

Overall, there is a total of 1.513 acres (1.113 acres non-jurisdictional + 0.40 acres jurisdictional) of regulated wetlands on the Project Site.

Tree Resources

The Project Site contains many mature trees, most notably the O'Toole Elm trees. Tree surveys of the site were conducted in October 2003 and February 2004 by *Hortscience, Inc.* The tree assessment was conducted to verify the tree species, measure trunk diameters, and assess tree suitability for preservation. A total of 186 trees were evaluated (166 are located on-site). Trees were not distributed evenly across the site, but were concentrated in several areas, as described below and shown on Figure ___, *O'Toole Elm Tree Location Map*..

Seventy-one trees are present on the north edge of the property, west of Abel Street. Most frequently occurring species were Arizona cypress (25 tress), red river gum (21 trees), blackwood acacia (10 trees) and silver dollar gum (10 trees). Tree condition was variable, due to a lack of maintenance in the recent past. A 33-inch diameter Monterey Pine close to Abel Street was the largest tree in this group.

Fifty-nine trees were located on the east side of Abel Street. This area was dominated by the double row of American elms. The elm trees' health is generally poor, as described below. Two mature cottonwoods were north of the elm row. Both trees were in poor condition with multiple stems and a history of failure.

Thirty-four trees were present along the North Road, south of the Hetch-Hetchy pipeline easement. Included in this planting were 12 red ironbark, 11 carob, and nine myoporum. All were in generally poor condition, due to poor structure, a history of topping and general lack of care. Just north of this group of trees were two coast redwoods. These trees may be located within the Santa Clara Valley Water District easement of Penitencia Creek. Both were in poor condition.

Fifteen trees were present in the area west of the Elmwood Rehabilitation Facility. Fourteen coast redwoods were immediately adjacent to I-880. Most were in poor condition due to a history of topping. One myoporum was more centrally located.

Seven trees were present in the former golf facility, including four young California peppers, a single coast live oak, a fruitless pear, and a Mexican fan palm. In addition, a number of unsurveyed (<6" diameter) trees were also located in this area.

O'Toole Elm Trees

As noted above, there are a total of 55 American elms (*Ulmus Americana*) arranged in a double row running southwest to northeast between Abel and Main Streets. These are the O-Toole Elm trees (refer to Section 5.8, Cultural Resources, of this DEIR). Thirty-five of the elm trees are located within the proposed Project Site. All of the 55 elm trees were topped many years ago. Large lateral branches were either removed or cut to large stubs. There was extensive decay at the topping point, as well as at old pruning wounds and sites of branch failure. Sprouts that developed following topping are six to 10-inches in diameter. A set of utility lines parallel the north side of the planting. Trees on this side have been trimmed to provide clearance and are generally smaller with asymmetric crowns.

All of the elms are in poor condition. Many of the trees have decaying trunks, and failed branches and stems. According to the tree surveys, decay was so extensive that the upper stem, where most of the branches were attached, simply broke off.

Suitability of Trees for Preservation

Of the 166 trees evaluated in the development area, approximately 151 are proposed for removal. Trees that are preserved on development sites must be carefully selected to ensure that they survive impacts from development, adapt to a new environment, and perform well in the landscape. For trees growing in open fields, away from people and property, the presence of structural defects and/or poor health presents a low risk of damage or injury if they fail. Conversely, when development is planned in areas within and adjacent to such trees, one must consider people's safety. Therefore, when development encroaches into existing plantings, one must consider the potential for trees to grow and thrive in a new environment, as well as their ability to remain structurally stable.

In determining a tree's suitability for preservation, four factors are evaluated:

1. Tree health: Healthy, vigorous trees are better able to tolerate impacts such as root injury, demolition of existing structures, changes in soil grade and moisture, and soil compaction than are non-vigorous trees.

2. Structural integrity: Trees with significant amounts of wood decay and other structural defects that cannot be corrected are likely to fail. Such trees shall not be preserved in areas where damage to people or property is likely.

3. Species response: There is a wide variation in the response of individual species to construction impacts and changes in the environment. American elms are generally tolerant of site disturbance.

4. Tree age and longevity: Old trees, while having significant emotional and aesthetic appeal, have limited physiological capacity to adjust to an altered environment. Young trees are better able to generate new tissue and respond to change.

Each tree on the site was rated for suitability for preservation based upon its age, health, structural condition, and ability to safely coexist within a development environment. Trees are rated as good, moderate or poor (refer to Table 11).

TABLE 11: ELMWOOD SITE TREE RATINGS

(Refer to Table 9 for Individual Tree Rating)

GOOD	Trees with good health and structural stability that have the potential for longevity at the site. Twenty trees were rated as having good suitability for preservation. Included in this group were five Arizona cypress and five blackwood acacia, both at the north edge of the property, as well as four California peppers in the former golf course facility.
MODERATE	Trees with fair health and/or structural defects that may be abated with treatment. Trees in this category require more intense management and monitoring, and may have shorter life-spans than those in the "good" category. Twelve trees were rated as having moderate suitability for preservation, including five Arizona cypress and two river red gum, both along the north edge of the site.
POOR	Trees in poor health or with significant defects in structure that cannot be abated with treatment. Trees can be expected to decline regardless of management. The species or individual tree may either possess characteristics that are undesirable in landscape settings or be unsuited for use areas. One hundred fifty-three trees were rated as having poor suitability for preservation, including 55 American elm , 17 river red gum, 15 Arizona cypress, 14 coast redwood, 12 red ironbark, 11 carob, and 10 silver dollar gum.

5.5.2. BIOLOGICAL RESOURCES IMPACTS

Project impacts relative to biological resources are considered significant based on CEQA Guidelines. These include:

- Have a substantial adverse effect on any species identified as a candidate, sensitive, or special status species in local, regional, state or federal plans or regulations;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local, regional, state or federal plans or regulations;
- Have a substantial adverse effect on federally protected wetlands;
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors;
- Conflict with any local ordinances protecting biological resources, such as a tree preservation policy or ordinance;
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other adopted local, regional, or state habitat conservation plan.

5.5.3 PROJECT IMPACTS

As proposed, the Project Site will be graded for development. Any existing plant or animal species on the site will likely be removed or disturbed.

Impacts to Special Status Plant Species

No special status plant species considered likely to occur on the Project Site were observed during field surveys conducted during the summer and fall months. Based on these surveys, the Biological Resources Study confirmed that the special status plants that flower during the summer and fall months are absent from the site. These species include: San Joaquin spearscale, Congdon's tarplant, Prostrate navarretia, California seablite, Robust spineflower, and Point Reyes bird's-beak.

Special status plants that flower during the spring months, however, were not surveyed. These species are: alkali milk-vetch, Contra Costa goldfields, Fragrant Fritillary, and Hairless Popcorn-flower. Although the Biological Resources Study concludes that there is only limited probability that these species will occur on the site, disturbance of these species, shall they occur, would be a potentially significant impact. To mitigate these potential impacts, Mitigation Measure BIO-1, below, is added to the Project requiring appropriately timed surveys for these species to occur prior to Project development.

Impacts to Special Status Fish Species

Proposed development could result in indirect impacts to special status fish species, from degradation of water quality due to discharge of soils and other materials into Penitencia Creek during construction. The discharge of stormwater runoff, containing herbicides, insecticides, fertilizers, petroleum products, and additional sediments, from the developed Project through the existing stormwater system could add additional pollutants to Penitencia Creek further degrading water quality. The amount of pollutants (i.e., sediment, metals, oil and hydrocarbons) originating from the Project Site would be minor in comparison to overall pollutant loads generated by upstream developments. The addition of these pollutants, however, may contribute to habitat degradation in Penitencia and Coyote Creeks, which could indirectly impact Chinook salmon and the central valley steelhead, both federally threatened species. Mitigation Measure BIO-2, below, is added to the project to ensure that run-off to the creek is reduced to acceptable levels.

Impacts to Special Status Birds

Trees and shrubs scheduled for removal on the Project Site provide suitable nesting habitat for raptors and other identified sensitive bird species. Tall eucalyptus and elm trees occur within the development property area and are suitable for nesting. Nesting raptors and other migratory bird species are protected under the provisions of the Migratory Bird Treaty Act and the CDFG Code Sections 3503, 3503.5 and 3800. Tree removal during the nesting season could destroy nests of sensitive bird species. This would be considered a potentially significant impact. Mitigation Measure BIO-3, below, is added to the Project to protect nesting raptors and migratory birds from possible disturbance.

Impacts to Burrowing Owl

Twelve burrowing owls and six active nests were found on the development property with combined home ranges estimated to encompass the entire site. It is assumed that burrowing owls currently residing on the Property will be evicted prior to construction. Removal of the burrowing owls and/or their active nests would be a potentially significant impact. To mitigate this potential impact, the developer negotiating with CDFG to reach a mitigation agreement (MA). Appropriate mitigation includes relocation of the owls. Passive relocation of burrowing owls shall not result in the direct loss of individuals due to their mobility. Suitable habitat exists approximately three quarters of a mile to the west along the Coyote Creek corridor and the San Jose/Santa Clara County Water Pollution Control Plant. Additional habitat exists in the foothill region of Milpitas located approximately two miles to the east. Both sites are well within the flight range of burrowing owls.

At the time of proposed development, the number of owls and the total number of acres required for mitigation will be determined. Surveys prior to development would be used to determine the number of owls on the development site and the number of active burrows. For

the nesting season in the year 2004, the MA stipulates that no attempts at passive relocation will occur and the development property will be undisturbed. The burrowing owls will be allowed to begin and complete their breeding cycle within the development property without relocation. Mitigation measures BIO-4 and BIO-5, below, is added to the Project to ensure the MA is properly implemented.

Impacts to Pallid Bat

No focused surveys for bats have been conducted for the development property; however, the development property has appropriate foraging habitat for pallid bats as well as a variety of other special-status bat species. Structures located on the development property may provide roosting sites for bats. A pallid bat roost is know to be present in the area of Berryessa; however, multiple high quality alternative foraging sites for pallid bats are know to occur in the area. The loss of potential foraging habitat within the development property is considered to be a less than significant impact, because other foraging habitats will remain in the vicinity of the development property.

Impacts to Regulated Wetlands/Waters

A total of 1.513 acres of regulated wetland/water features exist within the boundary of the development property. Penitencia Creek, a drainage ditch, a detention/settling basin, and isolated seasonal wetlands are found on the development property. Of the total acreage, only Penitencia Creek is regulated by the Corps, with a total of 0.4 acre. The Project would result in 0.02 acre of impacts to jurisdictional waters located within Penitencia Creek. Impacts from run-off associated with construction of two outfall structures, bank stabilization and dewatering structures are potentially significant. Mitigation Measure BIO-2, discussed above, is added to the project to ensure that run-off to the creek is reduced to acceptable levels.

As noted above, the detention/settling basin and isolated wetland would not fall under the regulation of the Corps. While exempt from Corps regulations, the RWQCB would have regulatory jurisdiction over the detention/settling basin and the isolated wetland as a "water of the State." To mitigate potential impacts to jurisdictional wetland/waters of the U.S. the following Mitigation Measures BIO-6 and BIO-7 are added to the Project.

Impacts to Trees

The Tree Study recommends guidelines for replanting the existing healthy trees on-site. However, none of the existing trees is protected by local, regional, state or federal plans or regulations. Consequently, potential removal of these trees is not considered a significant impact.

Summary of Biological Resource Impacts

Project development could result in potentially significant adverse impacts relative to the following species/resources:

- Special status plants: alkali milk-vetch, Contra Costa goldfields, Fragrant Fritillary, and Hairless Popcorn-flower due to disturbance or removal during construction activities;
- Special status fish species, from degradation of water quality due to discharge of soils and other materials into Penitencia Creek during construction.
- Nesting raptor and migratory birds due to tree removal;
- Burrowing owls due to site disturbance during construction activities;
- Degradation of Penitencia Creek associated with construction of two outfall structures, bank stabilization and dewatering structures; and conflicts with RWQCB provisions regarding disturbance of the detention/settling basin and isolated wetland.

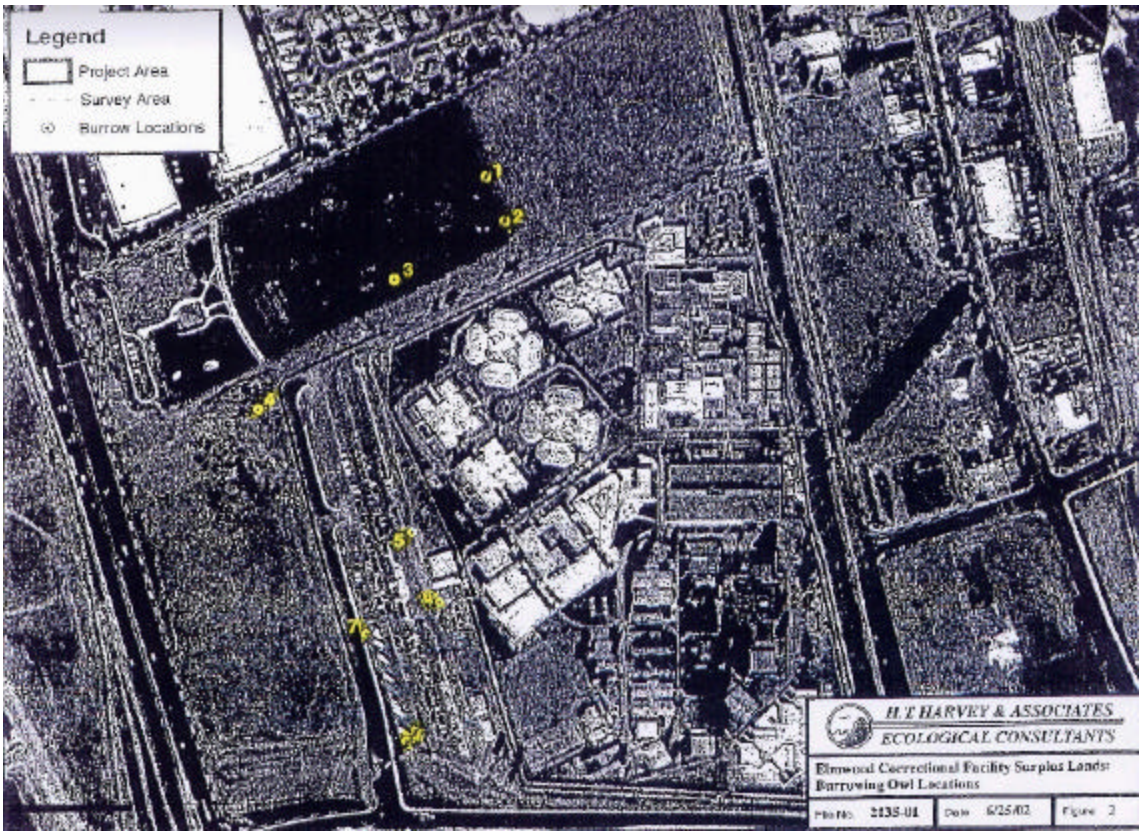
Mitigation Measures BIO-1 through BIO-7 are added to the Project to mitigate these impacts.

Elmwood Residential & Commercial Development Project

BIOTIC HABITATS

Date: Sep 28, 2004

Figure 10

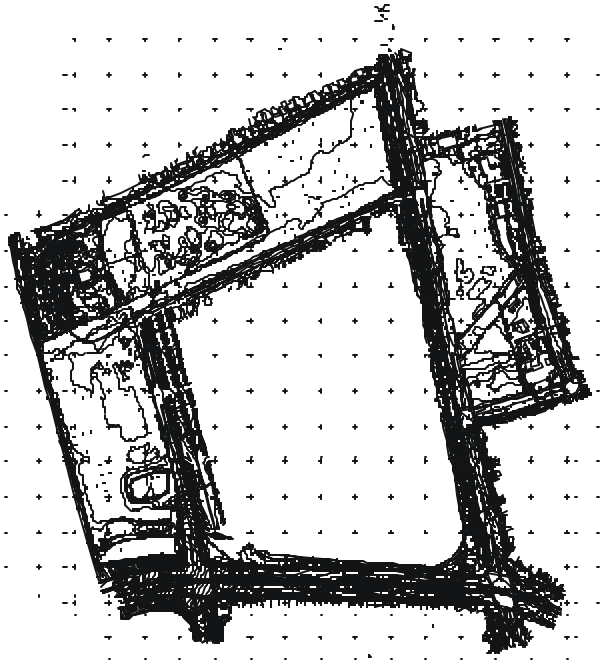


Elmwood Residential & Commercial Development Project

LOCATION OF BURROWING OWLS

Date: Sep 23, 2004

Figure 11



Elmwood Residential & Commercial Development Project

O'TOOLE ELM TREE LOCATION MAP

Date

Figure 12

5.5.4 MITIGATION MEASURES

Special status Plant Species

BIO-1: Appropriately timed surveys shall be conducted by a qualified botanist according to protocols acceptable to USFWS and CDFG to determine the presence/absence of the four special status plant species (alkali milk-vetch, Contra Costa goldfields, Fragrant Fritillary, and Hairless Popcorn-flower). Surveys to detect the presence of special status plant species shall be conducted during the appropriate blooming period for each species. While only marginally suitable conditions exist for these species, surveys shall be conducted to ensure that they are absent from the site. If these surveys do not detect the presence of these or any other special status plant species, no further mitigation measures will be necessary. These plants can only be detected in the absence of disking, and any such survey shall be done prior to site disturbance. If special status plant species are detected, CDFG shall be contacted and appropriate protocols for relocating these plants shall be implemented. If identified, a rare plant mitigation and monitoring plan shall be developed to provide for the long-term protection of special status plant species believed present, per the above mitigation measure. The mitigation and monitoring plan for the plant species present would be prepared and, after review and approval by the City of Milpitas, the plan shall be implemented. The plan shall have provisions for either preservation in place or salvage of plant materials. The plan shall provide for the long-term persistence of a sustainable population of that plant species in the designated preserve area on the development property or on a similarly dedicated and preserved area in the general vicinity of the development. The plan shall contain funding and functional assurances for the maintenance and monitoring of the plants along with performance standards. The plan shall be implemented either before or concurrently with ground disturbing activities on the development property. The CDFG requires a 10-day notification period prior to any grading or earthworks that will affect a listed plant species. Therefore, prior to construction a survey and staking of the any rare plants on site would be required so that salvage of said plant material could be accomplished by CDFG.

Special Status Fish Species

BIO-2. Prepare a Stormwater Pollution Prevention Plan (SWPPP). This plan shall include provisions to minimize on-site and off-site impacts to biological resources resulting from project related runoff. Mitigation measures defined in the SWPPP shall include:

- The use of silt fencing, straw bales, sediment basins, and other measures to reduce the movement of construction-related sediments into Penitencia Creek and other sensitive habitats from the development property.
- The installation of grit and oil trap systems, which shall be maintained in perpetuity, to prevent non-point source pollutants from entering Penitencia Creek and other sensitive habitats. Equipment and layout of these systems shall be installed by professionals familiar with these systems to assure successful functioning during extreme storm events.
- Implementation of BMPs, compliance with the City of Milpitas Grading Ordinance and the installation of construction and silt fencing and/or fiber rolls will

prevent the discharge of construction debris and soil into Penitencia Creek during site clearing, grading and construction.

- Additional mitigation measures may include dewatering the section of creek channel surrounding the work areas associated with outfall and bridge construction. The dewatering structure shall be constructed with hand placed sand bags or other CDFG approved material.

Trees

BIO-3: To avoid the nesting season of raptors, tree and shrub removal shall not take place between February 15 and August 1, or as determined by CDFG on a case-by-case basis. Vegetation removal during the non-nesting season is recommended to ensure no nest establishment occurs in trees and shrubs scheduled for removal. If tree removal between February 15 and August 1 is required, a pre-construction survey shall be conducted no more than 30 days before the removal of any tree or shrub to identify the presence, or absence or raptor nests. If no nests are identified in trees to be removed during the pre-construction survey, no further mitigation is necessary. If nests are identified, CDFG shall be contacted and appropriate protocols for buffers initiated. If active nests are found within the trees in the development property, i.e. within eucalyptus, elm, redwood, or shrubs, CDFG requires a buffer area of 150 feet around the nest tree until juvenile raptors have fledged and are no longer dependant upon the tree for survival. If shrub vegetation removal is to occur between February 15 and August 1, a pre-construction survey for nesting migratory songbirds will be necessary to ensure that trees and shrubs are free of nesting birds. If songbird nests are found, a disturbance-free buffer shall be established around the nest tree or shrub and the nest shall be monitored until young birds have fledged. If this is not possible, the nest shall be monitored to determine when young birds are old enough to be taken from the nest and moved to an appropriate wildlife rehabilitation facility for hand-rearing.

Burrowing Owls

BIO-4: Prior to any discing for fire or weed control, a burrowing owl nesting/occupancy survey shall be completed on the development property. As established by the CDFG, burrowing owl surveys shall be conducted by walking suitable habitat on the entire property and (where possible) in areas within 150 meters (approximately 500 ft) of the project impact zone. The 150-meter buffer zone is surveyed to identify burrows and owls outside of the project are which may be impacted by factors such as noise and vibration (heavy equipment, etc) during project construction. Pedestrian survey transects shall be spaced to allow for 100 percent visual coverage of the ground surface. The distance between transect center lines shall be no more than 30 meters (approximately 100 ft.) And shall be reduced to account for differences in terrain, vegetation density, and ground surface visibility. If discing is to occur, all burrowing owl nests will be identified through the above survey process and a 250-foot radius established around the site where no discing will be conducted. Each burrowing owl nest site and associated escape burrows will be protected by the 250-foot buffer zone.

BIO-5: At such time as the MA is approved, mitigation actions shall be carried out prior to the burrowing owl breeding season. Generally, burrowing owls breed between February 1 and August 31. A passive relocation program would therefore be initiated between November 1 and January 31. The development property shall be resurveyed prior to initiating

mitigation actions to ensure that burrowing owls have not occupied new sites within the Project boundaries in the interim period between the initial surveys and the initiation of passive relocation mitigation measures. At a minimum, the following measures shall be implemented to minimize impacts to owls.

(g) On-site passive relocation using one way doors shall be implemented to encourage owls to move from occupied burrows to alternate natural or artificial burrows that are beyond the project impact area. Relocation of owls shall only be implemented during the non-breeding season between November and January 31.

(h) Because the p roject will result in the loss of all foraging habitat on the development property for burrowing owls, all of the owls on the development property shall be excluded by installing one-way doors in burrow entrances. One-way doors shall be left in place 48 hours in ensure that owls have left the burrow before excavation and back-filling of the burrow. Whenever possible, burrows shall be excavated using hand tools and back-filled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow.

(i) Because this project will reduce suitable foraging habitat on the development property below the threshold level of 6.5 acres per occupied burrow, as well as displacing owls from occupied burrows, the habitat shall be replaced off-site. Suitable off-site mitigation habitat suitable for burrowing owl habitat has been approved by CDFG. The total acreage of land will be determined at the time of the passive relocation surveys conducted prior to the undertaking the passive relocation activity. Off-site mitigation would consist of a minimum of 52 acres or 6.5 acres of mitigation habitat per occupied burrow, whichever is greater at the time of the passive relocation survey. The total acreage of land for mitigation shall be placed in a conservation easement in perpetuity and managed to maintain suitable habitat.

(j) Suitable burrowing owl habitat can be found in annual and perennial grassland, deserts, and scrublands characterized by low-growing vegetation. Suitable owl habitat may also include trees and shrubs if the canopy covers less than 30 percent of the ground surface. Burrows are the essential component of burrowing owl habitat: both natural and artificial burrows provide protection, shelter, and nests for burrowing owls. Burrowing owls typically use burrows made by fossorial mammals, such as ground squirrels or badgers, but also may use man-made structures such as cement culverts: cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement.

(k) One alternate natural or artificial burrow shall be provided on the location of the off-site mitigation area for each burrow that will be excavated in the project impact area. The off-site mitigation area shall be monitored on an on-going basis (the time period over which this monitoring shall continue will be established once a specific off-site mitigation area has been agreed upon) to confirm owl use of alternate burrows.

(l) Pre-construction surveys for burrowing owls would be necessary due to the presence of this species on the development Property. A pre-construction survey shall occur no more than 30-days prior to any ground disturbance activities to verify absence/presence of this species on the Property. It is recommended that an initial burrowing owl survey be performed during December and early January. If owls are

discovered, passive relocation of the owls can take place prior to February 1st. If owls are discovered after February 1st, the owls must be left on site and a 250-foot buffer established until September 1st.

Wetlands

BIO-6: The proposed project shall be designed and constructed to avoid impacts to the isolated wetland depression located along the western edge of the project site. If avoidance is not possible and the area would be affected during the construction of the project, then the applicant shall contact the RWQCB to determine if the isolated, shallow depressions meet the technical criteria for jurisdictional wetlands subject to regulation by the State. If the isolated depressions are under the jurisdiction of either the RWQCB, then the applicant shall apply for permits or authorizations as needed to construct the proposed project. The applicant shall comply with the conditions of any permits. Wetland mitigation requirements would be developed during the regulatory permitting process with the RWQCB.

BIO-7**:** The applicant will apply for a nationwide permit from the U.S. Army Corps of Engineers for the fill of approximately 0.02 acre of regulated waters. A Streambed Alteration agreement permit will be obtained from the California Department of Fish and Game allowing the construction of the outfalls, bridge and associated erosion protection. A Regional Water Quality Control Board Section 401 Water Quality Certification and/or Waiver of Discharge Requirements will be obtained for discharges to Penitencia Creek, and the fill of 1.113 acres of isolated wetland and the detention/settling basin. An encroachment permit will be obtained from the Santa Clara Valley Water District.

5.5.5. SIGNIFICANCE AFTER MITIGATION

Mitigation Measures BIO-1 through BIO-7 are expected to reduce adverse significant impacts from the Project relative to biological resources to less than significant levels.

5.6 GEOLOGY AND SEISMICITY

This section of the EIR discusses the existing geologic and soils conditions in and around the Project Site, and summarizes how Project development would be impacted by these existing conditions. Any mitigation measures necessary to resolve impacts also are discussed.

The following discussion of geology and seismicity is based on a geotechnical investigation conducted for the residential portion of the site by Terrasearch Inc., in September 2003.[11]

[11] It is assumed, for the purposes of this environmental review, that the geologic conditions present over the residential portion of the site west of Abel are similar to the conditions on the portion of the site proposed for commercial use. Since the commercial development would generally consist of paved areas and low-rise

The purpose of this report was to evaluate subsurface conditions at the site and to provide geotechnical recommendations for design and construction of the proposed Project. A copy of this report is presented in Appendix I of this DEIR.

5.6.1. EXISTING CONDITIONS

Geology

The Project Site is located within the alluviated flatlands of Santa Clara Valley and is relatively level in grade, with an elevation of approximately 18-20 feet above mean sea level (msl).

Geologically, the site is within the Coast Ranges geomorphic province, a belt of sedimentary, volcanic, and metamorphic rocks which extend from California to Oregon. The structural geology of the Coast Ranges is complex and is dominated by faults within the San Andreas Fault system. The materials underlying the site consist of Holocene fine-grained alluvium, which consists of unconsolidated, plastic, moderately to poorly sorted silt and clay rich in organic material. The fine-grained alluvium is generally less than 10 feet in thickness and was formed by standing floodwaters. Thick layers of clay, silt, sand and gravel underlie the fine-grained alluvium (up to three miles thick), which is underlain by Franciscan Complex bedrock.

Soils

Subsurface conditions encountered in the borings taken on the site were found to be variable. Subsurface soils consist mainly of stiff, moderately expansive silty clay to a maximum depth explored of 50 feet, with variable layers of clayey silt, and silty sand. The near surface soil on the east parcel (east of Abel) was found to be low to moderately expansive, while the near surface soil on the west parcel was found to be moderately to highly expansive. A thin layer of loose gravelly fill exists on the surface of the northern portion of the east parcel.

Groundwater

Groundwater was initially encountered in all borings at depths ranging from 9 to 15 feet and then rose to depths ranging from 7 to 11 feet on the east parcel, and initially encountered at depths of 11 to 16.5 feet, and then rose to 7 to 13 feet on the west parcel.

structures, this report is considered adequate, for the purposes of this EIR. Site-specific geotechnical analysis will be conducted, prior to issuance of building permits on the commercial site.

Geologic Hazards

Seismicity

The Project Site is located within the San Francisco Bay Area, which is recognized as one of the most seismically active regions in the United States. Significant earthquakes that occur in the Bay Area are generally associated with crustal movement[12] along well-defined, active, fault zones of the San Andreas Fault system. The trace of the Hayward Fault is situated approximately 3.9 kilometers (2.4 miles) east of the site and is considered an active strike-slip fault with right lateral motion. The San Andreas Fault, also an active strike-slip fault, trends in the northwesterly direction and is located approximately 15.5 miles southwest of the site. Although the site is within a seismically active region, it is not located within an Alquist-Priolo special studies zone.

During seismic events in the San Francisco Bay Area, one of three events typically occurs:

- Surface failure or ground rupture;
- Ground shaking; and/or
- Secondary failure such as lurch cracking, landsliding, tsunamis or seiches, and liquefaction.

Surface failure or ground rupture tends to occur along lines of previous faulting. Since previously identified fault lines are not within or near the site, the possibility of surface fault rupture is considered negligible.

Ground shaking is caused by the transmission of earthquake vibrations from the ground to the structure. These vibrations may travel many miles from the epicenter of the earthquake. Because the Project Site is within a seismically active region, it is susceptible to ground shaking and resultant structural damage.

Secondary failure related to lurch cracking or landslides typically occur in areas with steep terrain. Because the topography of the Project Site relatively flat, the site is not susceptible to land sliding, ground lurching, or lateral spreading. The site is not located near an ocean or lakefront; consequently, secondary hazards of tsunamis or seiches are not probable.

As noted above, the subsurface soils of the Project Site are moderately to highly expansive. These types of subsurface materials are susceptible to liquefaction.

Liquefaction

Soil liquefaction is the result of seismic activity and is characterized as the transformation of loosely water-saturated soils from a solid state to a liquid state after ground shaking.

[12] Crustal movement is geologic stress that causes movement in the outer 80 kilometers of the earth's surface.

There are many variables that contribute to liquefaction including the age of the soil, the soil type, soil cohesion, soil density, and groundwater level. Liquefaction occurs primarily in relatively loose, saturated, uniformly graded, and fine-grained soils. Under earthquake stresses, these soils become "quick", lose their strength, and become incapable of supporting the weight of overlying soils or structures. There is a high possibility that the silty sand layers encountered in various borings across the site will liquefy in a strong earthquake. Due to the variation in subsurface conditions across the Project Site, liquefaction is expected to occur only in portions of the site. Results of liquefaction are generally ground damage in the form of cracks.

5.6.2 THRESHOLDS OF SIGNIFICANCE

Project impacts relative to geology and seismicity are considered significant, based on CEQA Guidelines and expected site geologic hazards, if the Project exposes people or structures to potential substantial adverse effects due:

- Strong seismic ground shaking;
- Seismic-related ground failure, including liquefaction.

5.6.3 PROJECT IMPACTS

Although the Project Site is relatively flat, areas of cut and fill will be required to ready the site for the proposed development. Due to the need to raise the proposed structures at least one foot above the 100-year flood base flood elevation (refer to Section 5.6, Flooding, Drainage and Water Quality) a substantial amount of fill will be imported to the site to raise the existing grades.

On the portion of the site west of Abel Street and north of the Elmwood Correctional Facility, the existing elevation ranges from approximately 18-20 feet above mean sea level (msl). Garage levels for each of the buildings will need to be at or above elevation 21.5 feet. In this area, Project grading will generate approximately 1,500 cubic yards of cut and require approximately 120,500 cubic yards of imported fill. The net difference is approximately 119,000 cubic yards of imported fill. Approximately 73,600 cubic yards will be available from the commercial portion of the site.

On the portion of the site east of Abel Street, the podium style of building construction will raise the residential units above the base flood elevation. This portion of the site will require approximately 500 cubic yards of imported fill to balance the expected 500 cubic yards of fill.

On the commercial area of the site, the existing elevation is approximately 20 feet. The commercial structures will need to be elevated a minimum of one foot above base flood

elevation, but other areas of the site will be designated as flood ways in a 100-year flood event. (Reference Figure 13, *Project Cut – Fill Map*.) Grading in the this area will generate approximately 76,000 cubic yards of cut and require 2,400 cubic yards of fill, for a net difference of 73,600 cubic yards of cut material. Overall, development of the proposed Project will require approximately 45,900 cubic yards of fill material to be imported to the site.

The detached residential structures west of Abel Street would be constructed on a post-tensioned slab foundation system, and the podium structures on the eastern portion of the site will be constructed on a spread footing foundation system. The building foundations will not be supported on piles.

While there is no specific development plan for the auto sales uses at this time, it is assumed that it would consist primarily of asphalt/concrete parking lot areas with slab foundation buildings.

Geologic Hazards

As discussed above, because of its location in a seismically active region, the Project Site is susceptible to ground shaking. Because soils on the site are moderately to highly expansive, the site is susceptible to liquefaction.

It is a standard practice of the City to require a development to be constructed in conformance with its geology and soils report findings and the California Building Code (CBC). The CBC establishes detailed criteria for excavation, earthwork, grading and construction. These criteria require all sites to be prepared and all structures to be constructed in conformance with state standards for seismic safety. Consequently, conformance with the Project geology and soils report and CBC is expected to reduce potentially adverse impacts on Project development from seismic ground shaking and liquefaction to less than significant levels.

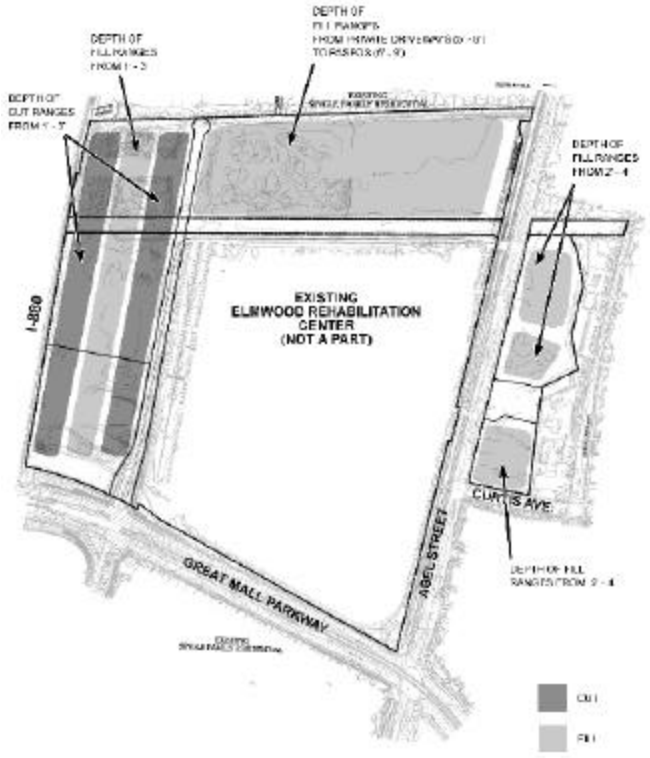
As noted above, a geotechnical investigation for the residential portions of the Project Site was submitted to the City as part of the Project application. This report is preliminary, and does not encompass the commercial areas of the site. To ensure a final geology and soils report is submitted and reviewed by the City prior to Project development, Mitigation Measure GEO-1 is added to the Project.

5.6.4 MITIGATION MEASURES

GEO-1: Prior to approval of any final map or issuance of any grubbing, grading or demolition permit, the developer shall submit final geology and soils report(s) addressing seismic ground shaking, liquefaction and other geologic soils seismic issues as directed by and to the satisfaction of the City. Development of the Project Site shall be accomplished in accordance with the City approved final geology and soils report(s).

5.6.5. SIGNIFICANCE AFTER MITIGATION

Mitigation Measure GEO-1 is expected to reduce adverse significant impacts from the Project relative to geology and soils to less than significant levels.



Elmwood Residential & Commercial Development Project

PROJECT CUT-FILL MAP

Date: Sep 28, 2004

Figure 13

5.7 FLOODING, DRAINAGE AND WATER QUALITY

This section of the EIR discusses the existing flooding, drainage and water quality conditions in and around the Project Site, and summarizes how Project development would be impacted by these hydrologic conditions. Any mitigation measures necessary to resolve impacts also are discussed.

The discussion of flooding, drainage and water quality is primarily based on the *Elmwood Development/Lower Penitencia Creek Floodplain Impact*, by Schaaf and Wheeler, dated June 8, 2004. A copy of this report is presented in Appendix J of this DEIR.

5.7.1 EXISTING CONDITIONS

The Project Site is adjacent to Lower Penitencia Creek, which consists of approximately 4 miles of channel within the City of Milpitas and drains an area of about 27 square miles at the I-880 crossing. Eight existing outfalls to Lower Penitencia Creek as well three other City underground storm drain piping systems serve the site.

Two existing bridges, crossing from Abel Street over Lower Penitencia Creek, exist in the proximity of the Project Site. Both bridges serve as entrances to the existing Elmwood Correctional Facility. The northerly bridge is accompanied by an access road that extends westerly to the proposed commercial site.

A strip parcel of land owned by the City of San Francisco that contains Hetch Hetchy water transmission lines (or aqueducts) borders the Project Site. This strip of land runs east-to-west and relates to the Project Site as follows: east of Abel Street, the Hetch Hetchy strip borders the north Project boundary; west of Abel Street at the proposed residential area, the parcel borders the south Project boundary; and at the proposed commercial area, the parcel bisects the site.

At the south end of the site, between the Correctional Facility and I-880, existing, large box culverts connect this site, hydraulically, with the areas south of Great Mall Parkway. These large, box culvert systems, which were installed under Great Mall Parkway and under the Correctional Facility access road, are for the purpose of conveying the 100-year sheet flows from lands to the south onto the Project Site. No conventional storm drain piping systems are connected to these culverts; they are for the sole purpose of passing the large, 100-year sheet flows.

FEMA FIRM Map Designation

The proposed Project Site is in FIRM Panel 3 of 4 for the City of Milpitas. The Federal Emergency Management Agency (FEMA) 1998 FIRM, designated as "060344 003G," shows the site east of Abel Street as having a 200-foot zone of sheet flow flooding 1 foot deep. The

remainder of the site is shown as subject to sheet flow flooding to a depth of 2 feet. (Reference Figure 14, FIRM Panel 3 of 4 for the City of Milpitas.)

Flooding

Major portions of the proposed Elmwood Project Site are in the 100-year floodplain as defined by FEMA (Federal Emergency Management Agency). Upper Penitencia Creek in San Jose and Berryessa Creek in Milpitas are the primary sources of flood waters in the local area. Flood waters travel in a downstream direction and co-mingle in the vicinity of the proposed project.

Overflow from East of Abel

East of Abel, the sheet flow crosses the Project Site in a swatch approximately 200 feet wide, 1 foot deep, with a discharge of 370 cubic feet per second (cfs). This sheet then exits onto Abel Street and flows north toward Calaveras Boulevard. Portions flow off toward the west at openings such as intersections, bridges, etc. Future development in this area of the Project site will need to accommodate an addition 100 cfs from this source. (Reference Figure 15, *Existing Project Area Drainage Pattern*s.)

Overflow from the South

The 100-year sheet flows from the areas south of the Project Site enter the site through the large box culvert systems under Great America Parkway and the Correctional Facility access road. These flood waters, totaling 1,200 cfs, flow northerly through the proposed commercial area onto the existing developed areas to the north.

These overflows exit the area of the commercial site at its northern boundary, against the backwater from the northerly floodplain. While this northerly floodplain is not a source of flooding for the Project Site, its resulting backwater represents a constraint to the site's development.

Existing Flood Control System Deficiency - Lower Penitencia Creek

Between the northern Project boundary and the existing northern Correctional Facility entrance bridge, the Lower Penitencia Creek west levee system does not meet Santa Clara Valley Water District (SCVWD) or FEMA freeboard standards, and consequently does not provide adequate flood protection. Consequently, the existing condition must consider the levee as "removed," or nonexistent. Without the levee, approximately 100 cfs would overflow the west creek bank onto the Project Site.

Existing Flood Control System Deficiency - Lower Penitencia Creek

Between the Benorthern Project boundary and the existing northern Correctional Facility entrance bridge, the Lower Penitencia Creek west levee system does not meet Santa Clara Valley Water District (SCVWD) or FEMA freeboard standards, and consequently does not provide adequate flood protection. Consequently, the existing condition must consider the

levee as "removed," or nonexistent. Without the levee, approximately 100 cfs would overflow the **west creek bank onto the Project Site.**

Flooding Impact East of Abel

The existing deficiencies of the Lower Penitencia Creek levee would cause the 100 cfs of flood water to fill the portion of the Project Site, west of Abel Street. This condition represents a constraint to development of the site west of Abel Street.

The existing deficiencies of the Lower Penitencia Creek levee would cause the 100 cfs of flood water to fill the portion of the Project Site, west of Abel Street. This condition represents a constraint to development of the site west of Abel Street.

City of Milpitas Storm Drain Master Plan

The existing City Storm Drain Master Plan anticipated the proposed commercial land use, as well as the proposed high density land use easterly of Abel Street. The proposed residential area west of Abel Street was anticipated to be a combination of low density residential and commercial.

Site Drainage System

Project Site east of Abel Street

Lower Penitencia Creek flows through the site, paralleling the west side of Abel Street. Five (5) storm drain outfall structures exist along the easterly side of the creek. Existing storm drain piping systems extend from each of these existing outfalls, crossing Abel Street to the frontage of the proposed Project.

Project Site west of Abel Street

Three (3) storm drain outfall structures exist along the easterly side of the creek. Existing storm drain piping systems extend from these outfall structures into the westerly Project Site. In addition to these facilities, the existing developed areas north of the Project Site provide three (3) possible connection points to the existing City underground storm drain system.

5.7.2 THRESHOLD OF SIGNIFICANCE

Project impacts relative to flooding, drainage and water quality are considered significant based on CEQA Guidelines and expected site hydrological conditions. These include:

- Place housing or structures within a 100-year flood hazard area;
- Place within a 100-year flood hazard area structures which would impede or redirect flood flows;
- Expose people or structures to a significant risk of loss, injury or death involving flooding;
- Substantially alter the existing drainage pattern of the site or area in a manner which would result in flooding on- or off-site;
- Violate any water quality standards or waste discharge requirements.

5.7.3 PROJECT IMPACTS

Flooding

East of Abel

Development of this portion of the Project Site will include a park, constructed in path of the existing sheet flow. The park will be constructed largely of permeable materials, resulting in no net increase in sheet flow volumes. Adjoining the park will be parking lots which will be able to contain flood flows should overflow from the park occur.

The balance of this portion of the Project Site will be developed with high density residential use. This development will consist of grading the site and installation of buildings, paved areas and landscaping. The residential living areas will be designed to be a minimum of 1 foot above the 100-Year Base Flood Elevation. This design will accommodate the existing sheet flows, allowing them to move through the site and discharge in approximately the same location as shown on the FIRM.

Overflow from the South

Development of the commercial area will grade the site and install buildings, paved areas and landscaping. The design will accommodate the 100-year sheet flows that enter the commercial site from the areas south of the Project through the large box culvert systems under Great America Parkway and the Correctional Facility access road. The commercial area will be designed to provide flowage area in the form of parking lots, open space, travel lanes, etc. allowing the 1,200 cfs to flow northerly through the proposed commercial area onto the existing developed areas to the north, as shown on the FIRM (reference Figure 14). The commercial site will construct buildings to be a minimum of 1 foot above the 100-Year Base Flood Elevation.

After development of the commercial property is in place, flooding would go onto the Elmwood Correctional Facility. The Project proposes to raise the Correctional Facility access road and portions of the adjacent parking lot in order to create a “bowl” to capture flood waters that enter the Correctional Facility site.

West of Abel

Development of the medium density residential uses proposed west of Abel Street will grade the site and install buildings, paved areas and landscaping. The residential living areas will be designed to be a minimum of 1 foot above the Base Flood Elevation (BFE). This design will accommodate the Lower Penitencia Creek flood waters, allowing them to move through the residential site and the proposed park facility on the adjacent Hetch Hetchy parcel, and discharge onto the proposed commercial area. The commercial area will accommodate this flow along with flows from the south, as noted above.

Lower Penitencia Creek Improvements

To correct the existing deficiencies of the Lower Penitencia Creek levee system, the Project proposes to construct a new bridge that would cross Lower Penitencia Creek midway between the existing Sylvia Avenue and Elmwood north crossings. The new bridge, located at the proposed residential entrance, will be designed to pass the flood flows in Lower Penitencia Creek (1,200 cfs).

Associated with the bridge would be other levee system improvements. These improvements are expected to include a slight (0.2 feet high) railing attached to the top of the existing floodwall located on the south side of the channel, and a slight (0.2 feet thick) raising of the levee.

Design of the bridge and levee improvements are have yet to be finalized. Mitigation will be added to the Project to require that bridge and levee improvements are designed to meet SCVWD and FEMA standards.

Site Drainage System

New Onsite Facilities

Proposed onsite drainage facilities including catch basins, field inlets, and underground piping systems will be installed and connected to the existing city piping systems serving the site. (Reference Figure 16 & 16.1, *Proposed Drainage*.)

Connections to Offsite Facilities

The existing piping and outfall system, described above, will be utilized by the Project. One new outfall will be installed as part of the Project in order to direct storm water from the commercial area to Lower Penitencia Creek. This proposed outfall will be located near the existing road immediately north of the Elmwood Correctional Facility. An alternative to a new outfall would be to secure an easement from the commercial area through the Elmwood Correctional Facility and then connecting to an existing outfall approximately 850 feet south of the proposed outfall which would then not be built.

Water Quality

Construction

The Project will conduct grading operations, install underground piping and conduit facilities, install asphalt and concrete surface improvement, construct building and install landscaping and recreational facilities. All of these construction operations will comply with the National Pollution Discharge Elimination System (NPDES) standards regarding erosion control, rainy season restrictions, runoff control, dust control. NPDES is a federal program established in compliance with the Clean Water Act to regulate the discharge of pollutants into natural watercourses.

Post-construction

To endure compliance with NPDES standards following Project development, a mitigation measure will be added to the Project to require educational flyers and other materials to be supplied to the residential and commercial users to increase their understanding of water quality and best management practices. The commercial uses will include on-site sediment and oil filtering devices for the pretreatment of the runoff from major paved areas.

Summary of Hydrology Impacts

The Project proposes a series of design treatments and facility improvements that will minimize adverse Project impacts related to flooding, site drainage and water quality. However to ensure that the Project and associated flood control and drainage improvements are properly implemented, Mitigation Measures HYD-1 through HYD-10 are added to the Project. To ensure that proper water quality protection measures are followed, Mitigation Measures HYD-11 through HYD 13 are added to the Project.

5.7.4 MITIGATION MEASURES

Flooding

HYD-1: Prior to approval of any final map or issuance of any grading, grubbing or demolition permit, the developer shall provide to the satisfaction of the City a final floodplain study, prepared by a qualified registered civil engineer. The study model shall account for all potential flooding sources/constraints affecting the Project. It shall demonstrate that all existing sheet flows through the proposed Project will be accommodated, and that adjacent floodplains will not be affected more than that allowed by FEMA. Development of the Project shall be accomplished in accordance with the City approved final floodplain study.

HYD-2: All residential living areas will be designed to be a minimum of one foot above the final designbase flood elevation.

HYD-3. The commercial structures will conform to the City of Milpitas requirements for commercial structures constructed within the floodplain.

HYD-4. Prior to approval of any final map or issuance of any grading, grubbing or demolition permit, the developer shall provide to the satisfaction of the City a final design for the new bridge at Lower Penitencia Creek midway between the existing Sylvia Avenue and Elmwood north crossings, prepared by floodplain study, prepared by a qualified registered civil engineer. The new bridge shall be designed to pass the 1,200 cfs Lower Penitencia Creek flows without raising the calculated creek water surface more than 0.1 foot. The construction of the new bridge shall not disturb the creek flow line, nor will construction activities be within the mean high water area as defined by the Corps of Engineers. Development of the bridge shall be accomplished in accordance with the City approved final bridge design.

Site Drainage System

HYD-5. The Project shall be designed and developed in accordance with final drainage plans, approved by the City. The drainage plans are expected to utilize existing storm drainage facilities and outfalls. One new outfall shall be installed with this Project in order to direct storm water from the commercial area to Lower Penitencia Creek. This proposed outfall shall be located near the existing road immediately north of the Elmwood Correctional Facility or as otherwise approved by the City. Subject to City approval, an alternative to a new outfall could be to secure an easement from the commercial area through the Elmwood Correctional Facility and connect to an existing outfall approximately 850 feet south of the proposed outfall.

HYD-6. All new public facilities shall conform to the City of Milpitas standard details.

HYD-7. The design of storm water collection and conveyance systems shall minimize erosion and other potential problems for on-site and adjacent properties.

HYD-8. On-site areas of impervious surfaces shall be minimized where possible to reduce runoff.

HYD-9. The Project shall provide storm drain system signs or stenciling with language to discourage illegal dumping of unwanted materials into the catch basins and field inlets.

HYD-10. Development of the commercial properties shall include on-site sediment and oil filtering devices for the pretreatment of the major paved areas.

Water Quality

HYD-11. The Project shall implement construction Best Management Practices (BMPs), as sanctioned by the City, to ensure that water quality is protected. Construction BMPs shall include, at a minimum, erosion control measures, sediment transfer reduction measures and dust control measures. In addition, the site developer shall retain a construction manager familiar with NPDES permit requirements to monitor construction activities, as directed by the City.

HYD-12. CC&R's for all future residential development associated with the Project shall include requirements for the Homeowners' Association to implement the following measures:

a) Within any common landscaping and open space areas, the following measures shall be implemented:

- Materials Use Controls, which include good housekeeping practices (storage, use and cleanup practices) when handling potentially harmful materials, such as cleaning materials, fertilizers, paint, and where possible using safer alternative products;

- Material Exposure Controls, which prevent and reduce pollutant discharge to storm water by minimizing the storage of hazardous materials (such as pesticides) onsite, storing materials in a designated area, installing secondary containment, conducting regular inspections, and training employees and subcontractors;

- Material Disposal and Recycling, which includes storm drain system signs and stenciling with language to discourage illegal dumping of unwanted materials. The Homeowners' Association shall notify Project residents of household hazardous waste and used oil recycling programs.

b) Dumping of waste products (solid waste/liquid waste and yard trash) into storm drain systems, open space areas, and creeks is prohibited.

c) Maintenance provisions for private street, parking lots and storm drain facilities shall control the movement of pollutants and removal of them from the pavement through catch basin cleaning, storm drain flushing, street sweeping, and by regularly removing illegally dumped material from the Project Site.

d) Educational flyers and other materials shall be supplied to the residential users to increase their understanding of water quality and best management practices.

e) The CC&Rs of all residential projects shall be subject to City Community Development Director review and approval.

HYD-13. The following provisions shall be incorporated as conditions of approval to all future development applications within in the commercial portions of the Project:

a) Educational flyers and other materials shall be supplied to all commercial owners/tenants to increase their understanding of water quality and best management practices.

b) The following measures shall be implemented within any private and/or common landscaping and open space areas:

- Materials Use Controls, which include good housekeeping practices (storage, use and cleanup) when handling potentially harmful materials, such as cleaning materials, fertilizers, paint, and where possible using safer alternative products;

- Material Exposure Controls, which prevent and reduce pollutant discharge to storm water by minimizing the storage of hazardous materials (such as pesticides) onsite, storing materials in a designated area, installing secondary containment, conducting regular inspections, and training employees and subcontractors;

- Material Disposal and Recycling, which includes storm drain system signs and stenciling with language to discourage illegal dumping of unwanted materials.

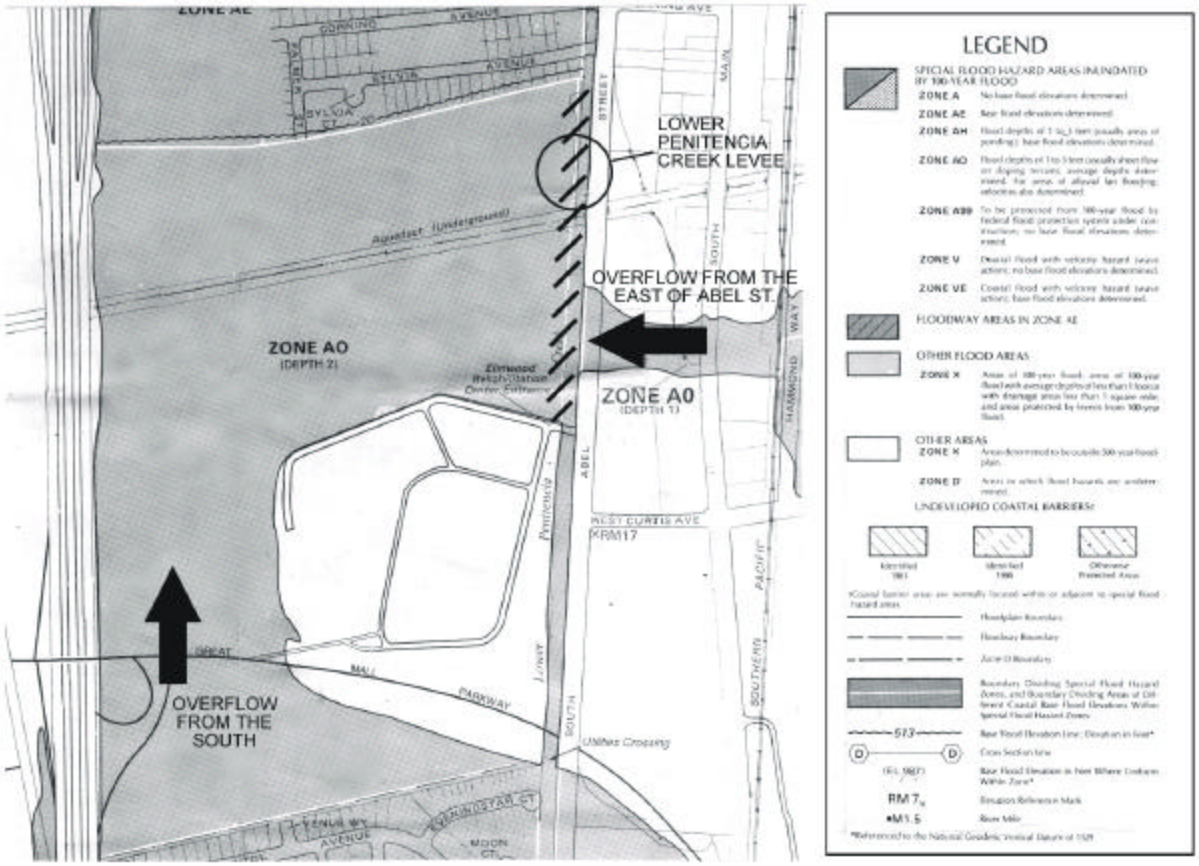
e) The commercial uses shall include a prohibition on the dumping of waste products (solid waste/liquid waste and yard trash) into storm drain systems, open space areas, and creeks;

f) The commercial operators shall be responsible for private street, parking lot and storm drain maintenance activities. These activities control the movement of pollutants and removal of them from pavement through catch basin cleaning, storm drain flushing, street sweeping, and by regularly removing illegally dumped material from the Project Site.

g) The commercial operators shall be responsible for the inspection, maintenance and repair of sediment and oil filtering devices for the pretreatment of the runoff from major paved areas.

5.7.5. SIGNIFICANCE AFTER MITIGATION

Mitigation Measures HYD-1 through HYD-13 are expected to reduce adverse significant impacts from the Project relative to hydrology to less than significant levels.

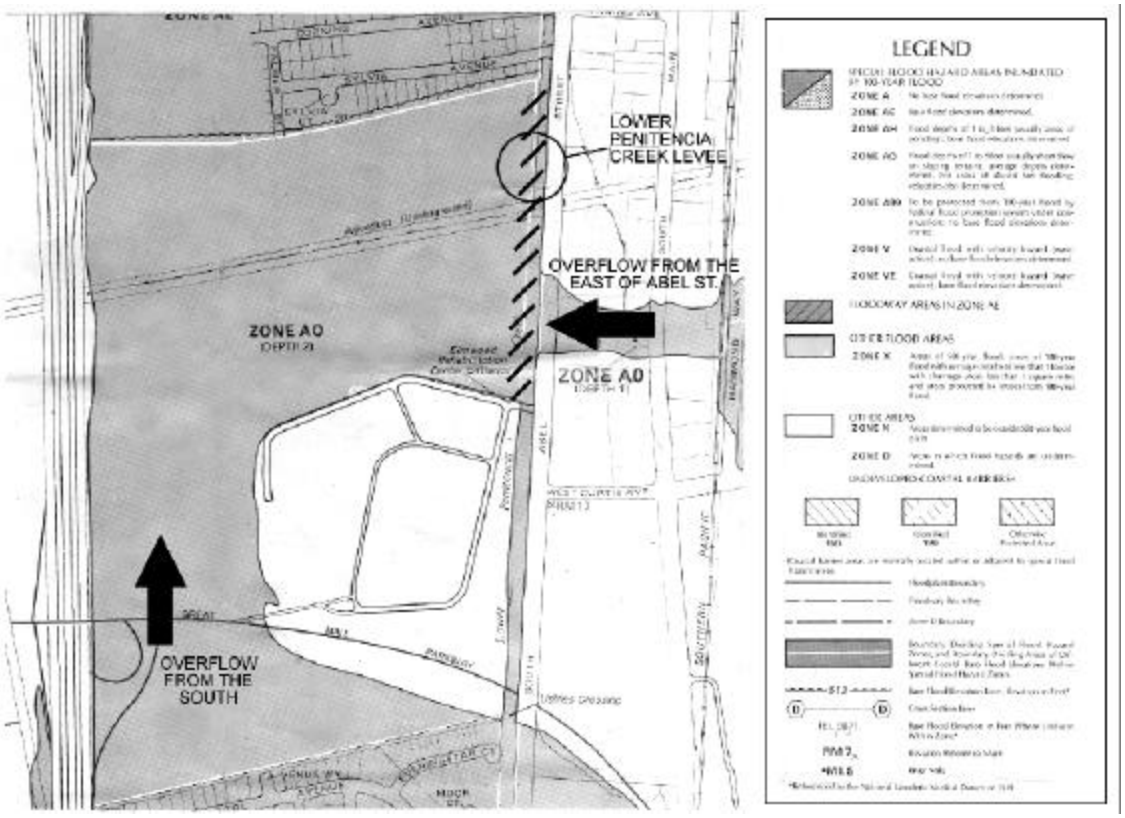


Elmwood Residential & Commercial Development Project

FLOOD INSURANCE RATE MAP

Date: Sep 29 2004

Figure 14

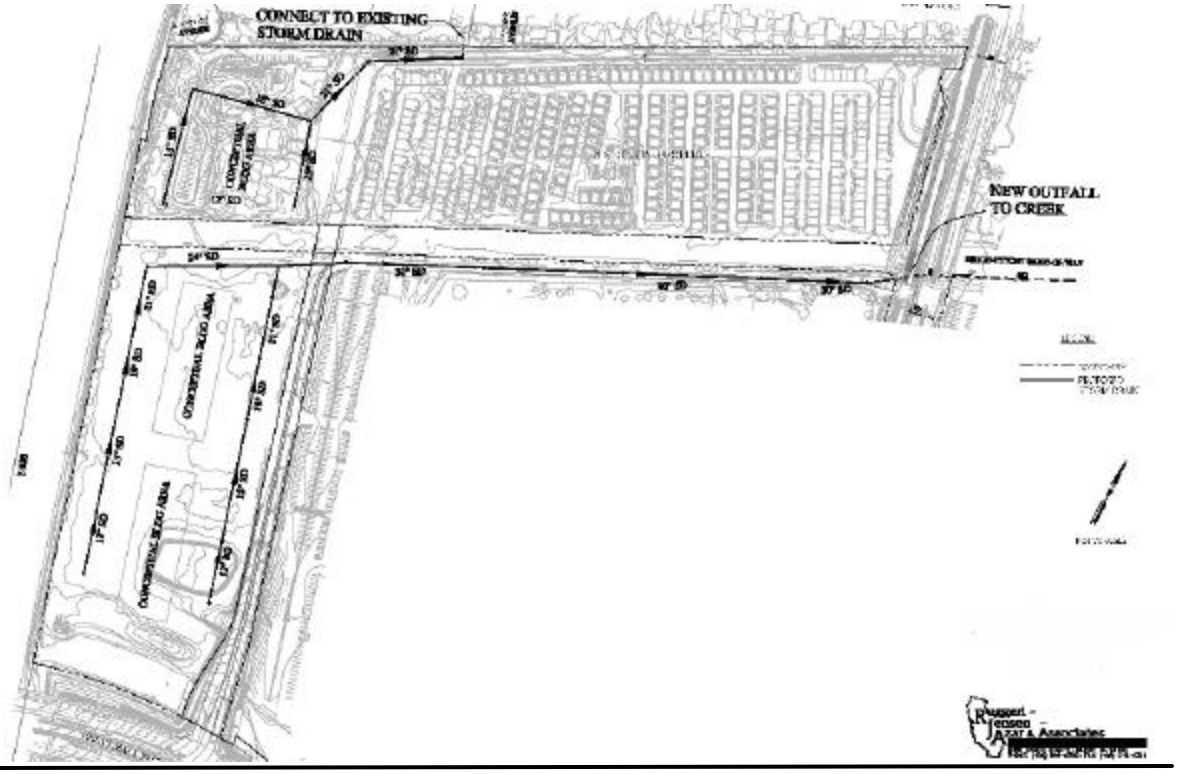


Elmwood Residential & Commercial Development Project

EXISTING PROJECT AREA DRAINAGE PATTERNS

Date: Sep 27, 2004

Figure 15

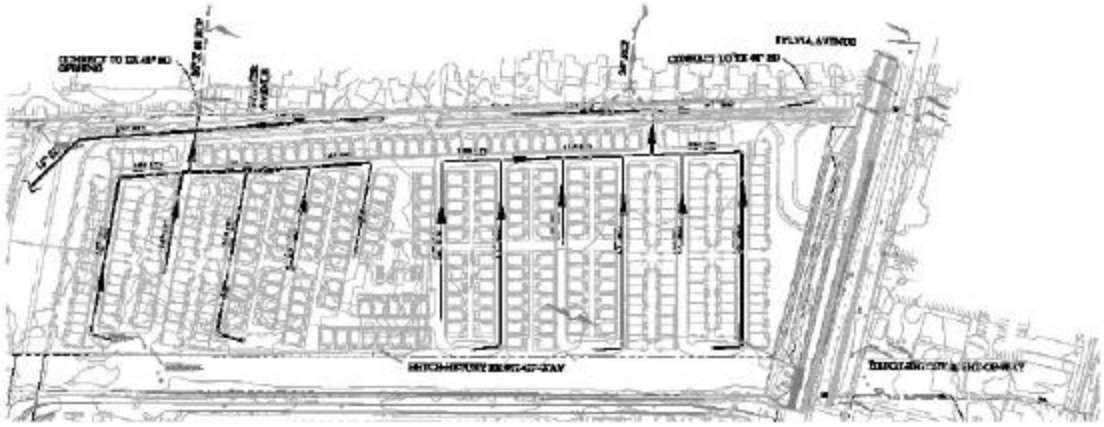


Elmwood Residential & Commercial Development Project

PROPOSED COMMERCIAL PROJECT DRAINAGE

Date: Sep 28, 2004

Figure 16



LEGEND

BOUNDARY
EXISTING STORM DRAIN
PROPOSED STORM DRAIN

Russell - Arntzen - Azar & Associates

Elmwood Residential & Commercial Development Project

PROPOSED RESIDENTAIL PROJECT DRAINAGE

Date: Sep 28, 2004

Figure 16.1

5.8. CULTURAL RESOURCES

This section of the EIR discusses potential cultural resources in and around the Project Site, and summarizes how Project development would impact these resources. Any mitigation measures necessary to resolve impacts also are discussed. Cultural resources evaluated in this Section include historical, archaeological and paleontological resources, and internment sites.

The following discussion is based upon an archaeological resources assessment and field reconnaissance completed by Holman & Associates in June 2002 and archaeological subsurface testing program conducted by William Self Associates, Inc. in September 2003 and February 2004. The assessment included a review of pertinent literature and maps, record reviews at the California Historical Resources Information System at Sonoma State University, and a field survey. The archaeological reports discuss the location of specific archaeological sites; in order to protect the sites, the reports are not included in this EIR. The reports are on file with the City of Milpitas, Planning Division and can be viewed during normal business hours.

5.8.1. EXISTING CONDITIONS

In the greater San Francisco Bay Area, buried prehistoric deposits are known to be clustered near creeks in the flat lands between the Bay and the foothills. Archaeological research in the San José area establishes this pattern for Penitencia Creek, which runs north/south, generally along the west side of Abel Street through the Project Site. Over the past several thousand years, Penitencia Creek has attracted aboriginal settlements and has caused them to be buried during the numerous course changes and flooding episodes which have occurred.

Historical Resources

The O'Toole Elms are an historic grouping of American elm trees (*Ulmus americana)* planted in a double row between Abel Street and Main Street and crossing diagonally through the eastern portion of the development area. (Reference Figure 12, *O'Toole Elms*.) The existing stand consists of fifty-five specimen trees and an estimated one-hundred second-generation root sprouts. In the 1870s, John O'Toole planted the elm trees to line the driveway from Mission Road (which is now Main Street) to his Victorian mansion, which he built for his family in the 1860s.

The mansion and the over 100 acres of farmland surrounding it were sold to James Boyd in 1883. The following year, he sold the property to the County of Santa Clara for use as an almshouse. In the 1940s, the County began to house low risk prisoners at the former ranch site. Over time, more and more ranch buildings, and eventually the main house, were torn down as the correctional facility expanded. The name of the facility became Elmwood, because of the elm trees.

A field survey conducted in support of the Project application observed no historic structures or buildings on or adjacent to the Project Site.

Archaeological Resources

Elmwood Correctional Facility Site

A prehistoric archaeological site (identified by as site CA-SCL-38 by the California Historic Resource Information System's Northwest Information Center) is located within the Elmwood Correctional Facility. Previous archaeological studies prepared at and adjacent to the Correctional Facility suggest that there could be a large archaeological complex in and around the site CA-SCL-38. These previous studies noted that archaeological materials were visible in the channelized portion of Penitencia Creek, adjacent to the Correctional Facility, and that other prehistoric site(s) are likely buried under alluvial deposition and thus are not discernible by surface inspection alone. In 1996, work inside the jail grounds led to the discovery of a large archaeological deposit containing over 200 human burials.

Elmwood Residential and Commercial Development Sites

Subsurface testing of the proposed residential and commercial portions of the Project Site were conducted in support of the Project application. A total of 31 trenches were spread out across the Project Site and excavated to a standard depth of five feet, with the exception of six trenches, which were initially excavated to greater depths for exploratory purposes.

No cultural resources or evidence of buried cultural material were found in the test trenches. The negative results obtained by the testing indicate that cultural deposits such as the large, widespread concentrations of burials found at CA-SCL-38 probably do not extend beyond the Correctional Facility into the development area.

5.8.2 THRESHOLDS OF SIGNIFICANCE

Project impacts relative to cultural resources are considered significant based on CEQA Guidelines. These include:

- Cause a substantial adverse change in the significance of a designated historical resource;
- Cause a substantial adverse change in the significance of an archaeological resource; Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or
- Disturb any human remains, including those interred outside of formal cemeteries.

5.8.3 PROJECT IMPACTS

Historical Resources Impacts

As described above, no historic structures or resources have been discovered on the Project Site. The materials uncovered by the subsurface trenching and testing did not include any

historic resources. Therefore, construction of the Project is not expected to result in impacts upon historic resources.

Arboricultural Resource Impacts

As described above, a double row of 55 American elm trees, the O'Toole Elms, extends between Abel and Main Streets and crosses diagonally through the eastern portion of the development area. Thirty-five of the trees are located on the Project Site and 20 are on the adjacent Fire Department property. An arborist report prepared for the Project indicates that many of the elms are unhealthy[13]. The Project proposes to remove the O'Toole Elms and construct a 1.2-acre public park in the vicinity of the elm trees. Within the park, the Project would plant a new double row of elms along the historic alignment.

Although the O'Toole Elms were planted over 100 years ago and are reminiscent of the area's history, they are not designated as a federal, state, or local resource. Pursuant to CEQA, to be considered significant, a historic resource must be so designated on a federal, state or local adopted list. Therefore, construction of the Project is not expected to result in significant adverse impacts upon these arboricultural resources.

However, because the O'Toole Elms are representative of the area's history, the Project developer proposes to prepare a historical record of the trees. This record will include preparation of a collection of historic photographs of the trees, notable people and buildings, and a detailed narrative history of the elms and the site. This information will be compiled into an interpretive program included on the park site, which will present the information in a manner that can be enjoyed by the public. The exhibit will include identification signs, interpretive or information plaques or other elements depicting the history of the site and the elms. Preparation of this record will be added to the Project as a condition of approval; and the details of the historic display will be subject to the review and approval of the City Council.

Archaeological Resources

The Project proposes to subdivide the Elmwood Correctional Facility from the commercial and residential components of the Project. However, it proposes no additional development at the Elmwood Correctional Facility, and consequently would not impact archaeological resources contained in CA-SCL-38.

Virtually all of the residential and commercial portions of the Project Site will be graded in preparation for construction of buildings and site improvements. The Project also proposes improvements to Lower Penitencia Creek. Although archaeological field inspection and subsurface testing of these site area found no evidence of buried cultural resources on-site, proximity of the development area to CA-SCL-38 and previous findings at Penitencia Creek suggests that archaeological resources may be present deeper below the earth's surface or in areas of the Project Site where test excavations were not conducted. Consequently, Project development could result in significant adverse impacts to archaeological resources.

[13] The current health and condition of the O'Toole Elms is described in Section 5.5, Biological Resources.

Mitigation Measure CUL-1 is added to the Project to require monitoring by a qualified archaeologist of any ground disturbing activities on the Project Site. If archaeological resources are found, Project activities shall be halted until appropriate mitigation measures are in place to ensure the resources are properly handled and/or protected.

Paleontological Resources

There is no record of paleontological resources in or around the Project Site. The Project is not expected to result in significant adverse impacts to paleontological resources.

Internment Sites

As noted above, Penitencia Creek has attracted aboriginal settlements and has caused them to be buried during the numerous course changes and floods. Inside the Elmwood Correctional Facility, human burials have been found. Grading associated with Project development could uncover human internment sites. Consequently, Project development could result in significant adverse impacts to internment sites. Mitigation Measure CUL-1 provides for the monitoring and mitigation of human remains as well as archaeological sites.

Summary of Cultural Resource Impacts

No Project impacts related to historical resources have been identified. Although not considered a significant historic resource pursuant to CEQA, a condition of approval will be added to the Project that will require the developer to prepare a historic record of the O'Toole Elms and the site.

Previous archaeological findings on and near the site indicate that the Project could have a significant adverse impact relative to archaeological resources and internment sites. Mitigation Measure CUL-1 is added to the Project to reduce these impacts to less than significant levels.

No Project impacts relative to paleontological sites are expected.

5.8.4 MITIGATION MEASURES

CUL-1**:** Any future ground disturbing activities on the Project Site shall be monitored by a qualified archaeologist to ensure that the accidental discovery of significant archaeological materials and/or human remains is handled according to CEQA Guidelines § 15064.5 regarding discovery of archeological sites and burial sites, and Guidelines § 15126.4(b) identifying mitigation measures for impacts on historic and cultural resources. (Reference CEQA §§ 21083.2, 21084.1.) In the event that buried cultural remains are encountered, construction will be temporarily halted until a mitigation plan can be developed. In the event that human remains are encountered, the developer shall halt work in the immediate area and contact the Santa Clara County coroner and the City of Milpitas. The coroner will then contact the Native American Heritage Commission (NAHC) which will in turn contact

the appropriate Most Likely Descendent (MLD). The MLD will then have the opportunity to make a recommendation for the respectful treatment of the Native American remains and related burial goods.

5.8.5. SIGNIFICANCE AFTER MITIGATION

Mitigation Measure CUL-1 is expected to reduce adverse significant impacts from the Project relative to cultural resources to less than significant levels.

5.9 HAZARDS

This section addresses issues related to hazards in and adjacent to the Project Site, including hazardous substances and potential health hazards. Hazardous conditions currently found within the Project Site and surrounds, potential Project impacts related to hazards, and any mitigation measures necessary to resolve impacts are discussed.

The following discussion is based on a Phase I Environmental Site Assessment (ESA) by URS Corporation in August 2002 and a soil assessment by Aqua Science Engineers, Inc. in September 2003. The Phase I ESA was conducted to determine the presence of recognized environmental conditions, primarily resulting from releases of hazardous materials or the presence of hazardous substances in soil and/or groundwater at or near the Project site that could impact the Project. The purpose of the soil assessment was to determine if imported soil that was stockpiled on the subject site (used for the configuration of a golf driving range) contained any chemicals of concern that may substantially affect the use of the property for residential and commercial development. Complete reports are provided in Appendices M-N of this DEIR.

5.9.1 EXISTING CONDITIONS

Hazardous materials are commonly used by large institutions, commercial and industrial businesses. Hazardous materials also include a broad range of common substances such as motor oil and fuel, pesticides, detergents, paint, and solvents. A substance may be considered hazardous if, due to its chemical and/or physical properties, it poses a substantial hazard when it is improperly treated, stored, transported, disposed of, or released into the atmosphere in the event of an accident.

The Project Site consists of multiple parcels, totaling approximately 59 acres, generally along Abel Street adjacent to the Elmwood Correctional Facility. The Project Site is located on relatively flat land and is situated within a fully developed area consisting of roadways, commercial buildings, government facilities, and residential properties.

The Project Site was used primarily for agricultural purposes between at least 1939 to about 1979. Because the site was used for agricultural purposes for several decades,

pesticides were likely applied to crops/orchards during the course of normal farming operations.

The northwest portion of the site was previously used as a golf driving range and putting green; this facility was closed prior to April 2001. The Project Site is not currently developed with any operating businesses or other facilities. The closed golf facility consists of a clubhouse, restroom, and equipment storage shed that will be demolished. The remainder of the Project Site is generally undeveloped open land.

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Potential On-Site Sources of Contamination

Soil Sampling and Testing

Soil sampling was conducted on three stockpiles of imported soil present in the northwest portion of the site proposed for single-family residential development. Soil samples were collected and analyzed for organochlorine pesticides and PCBs, total petroleum hydrocarbons (as diesel, motor oil, and gasoline), benzene, toluene, ethylbenzene, total xylenes (BTEX), methyl tertiary butyl ether (MTBE), polynuclear aromatic hydrocarbons (PNAs), volatile organic compounds (VOCs), and CAM 17 metals[14]. Chromium III and arsenic were found in the soil samples at common background concentrations that are below levels of concern, based on the San Francisco Bay Regional Water Quality Control Board (RWQCB) environmental screening levels ESLs). No other identified hazardous chemicals were found.

Based on the analytical results of soil samples collected, chemical levels in the on-site soils are within acceptable ESL ranges, and would not inhibit the use of the property for residential development.

Asbestos and Lead-Based Paint

Asbestos-containing materials (ACMs) are of concern because exposure to ACMs has been linked to cancer. ACMs are defined by the Federal Environmental Protection Agency as materials containing more than one percent (1%) asbestos. Lead-based paint is of concern, both as a source of direct exposure through ingestion of paint chips, and as a contributor to lead interior dust and exterior soil. Lead was widely used as a major ingredient in most interior and exterior oil-based paints prior to 1950. In 1972, the Consumer Products Safety Commission limited lead content in new paint to 0.5 percent (5000 parts per million [ppm]) and in 1978, to 0.06 percent (600 ppm).

Due to the recent age of the golf facility (mid-90s), it is unlikely that ACMs and/or lead-based paint would be present. The Phase I Assessment completed on behalf of the Project confirmed that no ACM's, lead-based paint or other hazardous materials or waste are present on the former golf facility. However, the interiors of the golf facility structures

[14] **CAM 17** refers to a list of heavy metals described in the *California Administrative Manual.*

were not accessible at the time of the Phase I Assessment, and therefore were not surveyed. Although unlikely, the interiors will require testing for ACMs, lead-based paint and other hazardous materials and waste prior to demolition.

Transformers

There are two ground mounted electrical transformers located near the abandoned golf facility and pole mounted electrical transformers were observed on the parcel east of Abel Street. There is a potential for the on-site transformers to contain polychlorinated biphenyls (PCBs). According to Pacific Gas and Electric, however, most of their transformers with PCBs containing fluids have been replaced with non-PCB containing fluid. Further testing for PCBs in the on-site transformers and surrounding soils, and if needed remediation, in accordance with Federal and State requirements will be completed prior to any Project grading or demolition.

Potential Off-Site Sources of Contamination

A review of applicable regulatory agency documents and lists of known or potential hazardous waste sites or landfills, and properties or facilities currently under investigation for potential environmental violations was conducted to identify properties or facilities that have the potential to adversely affect environmental conditions at the site. Seven sites have potential to adversely affect the Project Site. (Reference Table 12, below.)

As indicated in Table 12, contaminants at the seven adjacent sites have been remediated or found inactive or not significant.

TABLE 12
OFF-SITE HAZARDOUS MATERIALS SOURCES

Name of Site	Location of Site	Database(s) Site Appeared On	Incident	Status
Elmwood Correctional Facility	701 South Abel Street, adjoins the Project Site	Cortese, LUST, CA SLIC, Historical UST, CHMIRS, RCRIS-SQG, HAZNET	A release of gasoline to soil and groundwater was discovered. The CHMIRS listing documents a release of six cubic feet of liquid dishwashing detergent in 1988. No details were provided for the CA SLIC listing.	Two gasoline USTs were removed in September 1993 and a case closure letter was issued by the Santa Clara Valley Water District (SCVWD) on February 1995. Soil remediation was completed.
Milpitas Fire Station #1	25 West Curtis Avenue, adjoins the Project Site to the east	LUST, CHMIRS	The LUST database indicates a fuel leak case. In addition to the LUST, 0.05 gallons of gasoline was reported released at this property in 1988.	One diesel and two gasoline USTs were removed in May 1992. Most of the contaminated soil was excavated and disposed of off-site. A case closure letter was issued by SCVWD on November 1996. Five groundwater-monitoring wells were installed.
U.S. Postal Service	450 South Abel Street, north to northeast of the Project Site	LUST, Historical UST	A gasoline release to soil and groundwater was discovered in 1987.	The UST was closed in 1987. A case closure letter was issued by the SCVWD on June 2000. Contaminated soil was excavated and two wells were installed to monitor the contamination in groundwater.
Federal Express	620 South Main Street	LUST	No details were provided.	One gasoline and one waste oil UST were removed in 1998. A case closure letter was issued by the SCVWD on June 1999.
PMT Union Pacific Railroad	650 Hammond, approximately 1/8 mile east of the Project Site	LUST, Cortese	A leaking waste oil UST was discovered at this site in 1992, affecting soil and groundwater.	Two waste oil USTs and one solvent UST were removed in 1992. A case closure letter was issued by the SCVWD on November 1996.
J.R. Parrish (Winston Tire)	400 South Main Street, northeast of the Project Site	CA SLIC	Minor impacts to soil from petroleum hydrocarbons (oil or grease).	A report dated April 1991 deemed this site inactive.
Residential property	225 Sylvia Avenue, adjoins the Project Site to the north	ERNS	A release of motor oil was reported in 1991.	No case files initiated by RWQCB; determined not significant.

Source: *URS Corporation*, August 2002.
Notes: Cortese: database identifies public drinking water wells with detectable levels of contamination, hazardous substance sites selected for remedial action, sites with known toxic material identified through the abandoned site assessment program, sites with USTs having a reportable release, and all disposal facilities from which there is known migration. LUST: Leaking Underground Storage Tank List is a compilation of sites with confirmed leaking underground storage tanks that have been reported to the Department of Environmental Quality. CA SLIC: Spills, Leaks, Investigation and Cleanup Cost Recovery Data Listings from the California Regional Water Quality Control Board. Historical UST: Underground Storage Tanks listings that compiles site names and addresses and tank information for sites with USTs. CHMIRS: database that contains information on reported hazardous material incidents. RCRIS-SQG: Resource Conservation and Recovery Act Program that identifies and tracks hazardous waste from the point of generation to the point of disposal. Database includes facilities that generate small (SQG) quantities of hazardous waste. HAZNET: database that identifies sites that ship hazardous waste. ERNS: database that includes reported accidental releases.

5.9.2 THRESHOLD FOR DETERMINING SIGNIFICANCE

In accordance with CEQA Guidelines Appendix G, a significant impact relative to hazardous materials is the emission of hazardous emissions or handling of hazardous or acutely hazardous materials, substances, or waste within proximity to a sensitive land use, such as residences, schools, hospitals.

5.9.3 POTENTIAL IMPACTS

As noted above, the interiors of the golf facility structures remain to be assessed for the presence of hazardous materials or waste, most notably ACMs and lead-based paint. The two ground mounted electrical transformers located near the abandoned golf facilities may contain PCBs. Consequently, Mitigation Measures HAZ-1 and HAZ-2, below, are added to the Project to ensure that any identified contaminants within the interior of the structures are properly surveyed, and if warranted removed, prior to demolition. With inclusion of these measures, potentially significant adverse impacts associated with on-site soils or sources of contamination would be reduced to less than significant levels.

Future residential and park/open space uses as proposed for the Project Site are not expected to produce or use hazardous materials. There is some possibility that future auto sales and services uses proposed for the Project Site could use hazardous materials. However, all new development will be required to comply with applicable local, state and federal laws governing the production, use, storage and disposal of hazardous materials. Consequently, the Project is not expected to result in new significant impacts relative to hazardous materials.

5.9.4 MITIGATION MEASURES

HAZ-1: Prior to issuance of any demolition permit, the developer shall demonstrate to the satisfaction of the City that the interiors of the existing golf facility structures have been assessed for ACMs, lead-based paint, and other potentially hazardous materials or waste. This assessment shall be conducted and attested to by a state registered or licensed professional with experience in these types of mitigations. . Should any potentially hazardous materials be found, the developer shall be responsible for removal and disposal of these materials in accordance with applicable state and federal regulations.

HAZ-2: Prior to issuance of any grading or demolition permit, the developer shall demonstrate to the satisfaction of the City that the two ground mounted electrical transformers and their surrounding soils have been tested for the presence of PCBs. This testing shall be conducted and attested to by a state registered or licensed professional with experience in this type of mitigation. Should any PCBs be found, the developer shall be responsible for removal and disposal of these materials in accordance with applicable state and federal regulations.

5.9.5 SIGNIFICANCE AFTER MITIGATION

Mitigation Measures HAZ-1 and HAZ-2 are expected to reduce adverse significant impacts from the Project relative to hazards to less than significant levels.

5.10 AESTHETICS

This section identifies the existing visual character of the Project Site and its surroundings, including scenic vistas to and from the Project Site. This section then assesses how the Project would affect the existing visual character, including scenic vistas. Potential Project impacts relative to light and glare are also examined. Any mitigation measures necessary to resolve impacts also are discussed.

5.10.1 EXISTING CONDITIONS

Visual Character of the Site

Section 3.0 of this DEIR discusses the existing character of the Project Site, and Figure 4, Project Site Photos, provide visual depictions of the site. The Project Site is vacant primarily dirt-covered land with an abandoned golf driving range in the northwestern quadrant. Distinguishing visual features include the drainage ditch along the northern boundary of the site; Penitencia Creek which is a man-made channel that runs along the west side of Abel Street; the abandoned golf course building and driving range fencing with netting, and the O'Toole Elms, a double row of American Elms, that run through the middle of the eastern portion of the Project Site and link Main Street and Abel Street.

Visual Character of the Surrounding Area

The Elmwood Correctional Facility, which encompasses 66.92-acres in the center of the Project Site, is the largest adjacent land use. Visually, the Correctional Facility is a block-shaped structure, with surface parking, minimal landscaping and surrounded by chain-link security fencing. Other highly visible surrounding land uses include the I-880, vacant land, the Fire Department practice structure, and adjacent residential and commercial developments.

Scenic Corridors

The General Plan designates the I-880 as a Scenic Connector. Scenic Connectors are designated streets connecting or providing access to Scenic Corridors or distant views. The I-880 provides potential views to hillsides located primarily northwest and east of the Project Site.

No Scenic Corridors are located in the vicinity of the Project Site.

5.10.2 THRESHOLD OF SIGNIFICANCE

Project impacts relative to aesthetics are considered significant based on CEQA Guidelines. These include the following criteria:

- Cause substantial degradation of the existing visual character or quality of the site and its surroundings;
- Cause a substantial adverse effect on a scenic resource; or
- Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.

5.10.3 PROJECT IMPACTS

Impacts Relative to the Existing Visual Character of the Project Site

As discussed in Section 5.1.3, above, the Project Site is currently vacant surplus County land that is part of the Elmwood Correctional Facility. The Project proposes to remove the surplus lands from the Correctional Facility site, and develop it with residential, commercial and open space uses. It will provide landscaped setbacks, new buildings designed to Midtown Specific Plan standards and guidelines, and a network of parks. Figure 17, *Illustrative Site Plan,* depicts the proposed layout, and landscaping and open space features of the residential components of the Project.

Figure 18, *Proposed Renderings for Town Homes,* and Figure 19, *Proposed Renderings for Podium Condos,* illustrate the expected appearance of the town home and condo portions of the development. Renderings for the single-family component have not yet been prepared. The Project includes an application for Site and Architectural Review for the residential uses. This process will ensure that the Project is visually pleasing and consistent with City standards and Midtown Specific Plan guidelines.

A site plan for the commercial component of the Project has yet to be developed. However, prior to development of the commercial parcels, the developer will be required to submit for City review and approval, an application for Site and Architectural Review for the commercial development

The Project is expected to improve the visual character of the site. No adverse impacts relative to visual character of the Project Site will occur.

Impacts Relative to the Existing Visual Character from the Project Site

As discussed in Section 5.1.3 above, the proposed Hetch Hetchy park, which is approximately 100 feet in width, will separate the proposed Project residential uses to the north from the Correctional Facility. Abel Street and Penitencia Creek, which combined are approximately 200 feet in width, will separate the 00000uses to the east from the Correctional Facility. These buffers are expected to provide attractive views from the Project Site. No adverse impacts relative to visual character of the site's surroundings will occur.

Impacts on a Scenic Resource

Currently, views from the I-880, a Scenic Connector, toward the Project Site take in the Correctional Facility, the abandoned golf driving range, and vacant dirt-covered land. The Project will replace that view with a view of a new development, designed in accordance with Specific Plan standards and guidelines. The Project is not expected to block or adversely impact views from the designated Scenic Connector to surrounding hillsides. Rather it is expected to improve these views by providing a more attractive foreground. No adverse impacts relative to scenic resources will occur as a result of Project implementation.

Impacts Related to Substantial Light or Glare

Lighting within the Project will be subject to the Specific Plan guidelines, which include:

- Lights should be designed and placed to direct lighting to appropriate surfaces and minimize glare into adjacent areas;
- The light source used in outdoor lighting should provide a white light for better color representation to create a more pedestrian-friendly environment.
- Low pressure sodium lamps are prohibited.
- To reinforce the pedestrian character of the area, light standards should not exceed 12 to 16 feet in height.
- The use of uplighting to accent interesting architectural features or landscaping is encouraged.

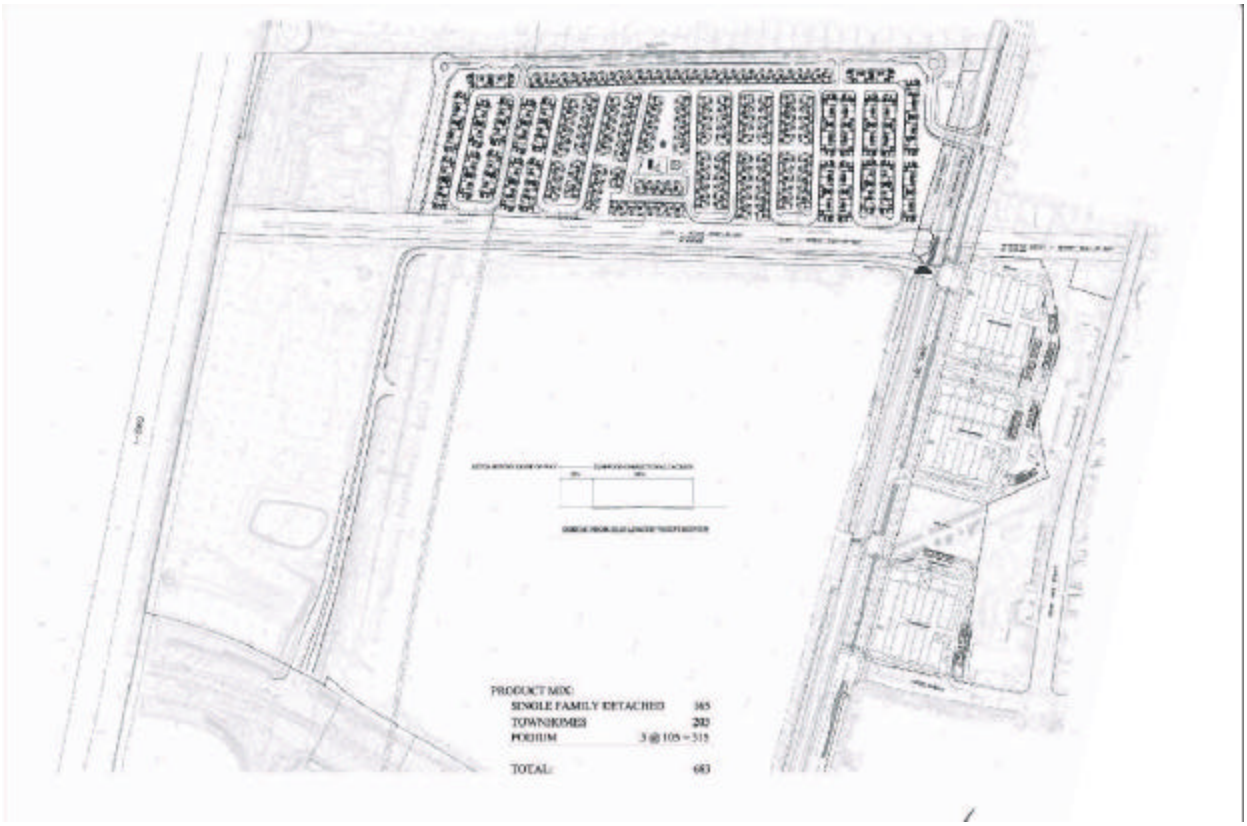
These guidelines will ensure that the Project will not create substantial adverse impacts related to light and glare will occur.

5.10.4 MITIGATION MEASURES

The Project is not expected to result in significant adverse impacts relative to aesthetics.

5.10.5 SIGNIFICANCE AFTER MITIGATION

No significant adverse impacts relative to aesthetics use are expected to occur because of Project implementation.



Elmwood Residential & Commercial Development Project

ILLUSTRATIVE SITE PLAN

Date: [illegible], 2014

Figure 17

Elmwood Residential & Commercial Development Project

RENDERING FOR PROPOSED TOWNHOMES

Figure 18

Elmwood Residential & Commercial Development Project

RENDERING FOR PROPOSED CONDOS

Date: Sep 28, 2004

Figure 19

5.11 PUBLIC UTILITIES

This section addresses potential impacts regarding public utilities serving the Project area, including water, sanitary sewer, recycled water, solid waste, gas, electric, cable and telephone. Existing conditions, potential impacts and mitigation measures for each utility service is discussed. Primary information for this Section was obtained from the respective utility agencies.

5.11.1. EXISTING CONDITIONS

Water Service

The City of Milpitas receives wholesale water directly from the San Francisco Public Utility Commission (SFPUC) through the system by connections on two of the four local aqueducts that transport water from mountain reservoirs to San Francisco and the Peninsula. While the SFPUC Hetch-Hetchy aqueduct is able to meet the City's demand, the City's 1980 *Water Master Plan* concluded that it would be more cost effective for the City to obtain some of its water from the Santa Clara Valley Water District (SCVWD). As a result, industrial areas in the southwestern part of the City have since August 1993 been receiving water from the SCVWD.

The SFPUC and SCVWD potable water supply sources are not blended under normal operating conditions due to different disinfection and corrosion control methods used for each source. With minor exceptions, SFPUC water is provided to the residential areas of the City while the SCVWD water is distributed to the industrial areas.

The 1999/2000 average water consumption in the City was approximately 12,600 acre-feet per year. The projected domestic water purchases for 2004/2005 is estimated at will be 11,860 acre-feet per year.

The Project Site is ringed by existing water lines. A 14" Santa Clara Valley Water District (SCVWD) line exists in Abel Street, as well as a 12" San Francisco Water Department (SFWD) line. To the northwest portion of the Project Site, a 16" City of Milpitas (City) line loops across the southernmost portion of the existing industrial park, where it connects to a 12" City water line at the South Abbott Avenue cul-de-sac.

In addition to the water lines in Abel Street, there is a 10" City water line in Curtis Avenue that serves the Elmwood Rehabilitation Center, and one 18" SCVWD water line and one 18" SFWD water line that connect to the existing lines in Abel Street.

The Hetch Hetchy parcel that bisects the Project Site contains a 72" SFWD water transmission main and a 90" SFWD water transmission main. No direct connection will be made to either of these transmission mains by the Elmwood project.

Although domestic water is supplied to the City of Milpitas by either the SFPUC or SCVWD, the water delivery system itself is owned and maintained by the City of Milpitas.

Recycled Water

The South Bay Water Recycling Program (SBWRP) is an on-going, multi-year effort to use high quality recycled water from the San Jose/Santa Clara Water Pollution Control Plant (WPCP) for irrigation, industrial, and other purposes. Phase 1 consists of approximately 60 miles of distribution pipeline to serve 240 customers in Milpitas, San Jose, and Santa Clara. Service on the Milpitas Pipeline segment began in winter of 1997 and provides recycled water to business/retail areas surrounding McCarthy Ranch and Oak Creek Industrial Park. About 12 miles of pipeline are completed in Milpitas. Construction of Phase 2 was recently completed. On-site retrofits are underway to expand the system some 9 miles into central Milpitas.

Sanitary Sewer

Sanitary sewer is provided by the City of Milpitas. The City's sanitary sewer system collects wastewater flows from approximately 6,000 acres within the City of Milpitas planning area, serving a population of approximately 63,800 people through 860,640 linear feet of sewers. The City's wastewater flows are conveyed mostly by gravity to the Milpitas Main Pump Station (Main PS), which pumps all the flow to the San Jose/Santa Clara Water Pollution Control Plant (WPCP) through two force mains. A small lift station is integrated into the collection system and second pump station, and is located on Venus Way, connecting a low-elevation portion of the City to the gravity sewer system. The sewer system includes a number of siphons under the San Francisco Public Utilities Commission (SFPUC) water supply pipeline, creeks and highways.

The San Jose/Santa Clara Water Pollution Control Plant (WPCP), the wastewater treatment facility for the City, is located in San Jose. It is a tertiary regional facility serving San Jose, Santa Clara, Milpitas, West Valley Sanitation District, Cupertino Sanitary District, County Sanitary District 2-3, Burbank Sanitary District, and the Sunol Sanitary District. Milpitas wastewater service area is contiguous with the City boundaries.

In 2001, the City discharged 9.0 mgd and is contractually limited to a flow of 12.5 mgd. The dry weather flow rate was 9.24 mgd in 2000. The WPCP has a dry-weather total capacity of 167 mgd, and a current average daily flow of approximately 110 mgd. There are no plans to increase the capacity of the WPCP.

There are two 15" sanitary sewer lines in Abel Street. One line flows from north to south and connects to a 30" sanitary sewer line that runs along the north side of the Hetch Hetchy parcel. The second 15" sanitary sewer line in Abel Street flows from north to south, and siphons under the water lines within Hetch Hetchy parcel. The 30" sanitary sewer line north of the Hetch Hetchy parcel flows from east to west and runs the length of the Project Site, and continues west under Interstate 880.

There is one sanitary sewer line in Abel Street. The 15" sanitary sewer line flows from south to north and crosses below the Hetch Hetchy parcel via a siphon. This line continues north but can overflow into connects to a 30" sanitary sewer line running east to west which is located just north of Hetch Hetchy pipeline. This connection point is on approximately 490' west of Abel Street.

Another 15" sanitary sewer line flows across the western portion of the Project Site from south to north. This line crosses the Hetch Hetchy via a siphon and can overflow into the branches off the 30" sanitary sewer running east to west (described above) at point approximately 1,400' west of Abel Street. The 15" sanitary sewer and flows north and leaves the Project Site through the industrial park north of the Project Site.

Solid Waste

Solid waste and recycling collection services for the City of Milpitas are provided by BFI. Refuse from the City is disposed of at the Newby Island Landfill, operated by BFI and located on Dixon Landing Road in San José. It is a Class III landfill, with an estimated life-span of approximately 20 years. The incremental growth anticipated by the Specific Plan would not substantially shorten this life-span as it is consistent with the growth that has been anticipated by BFI in their life-span projections. Thus, the solid waste disposal needs of the Midtown Area would be accommodated for the foreseeable future.

Electricity, Gas, and Telephone

Electrical Service

Pacific Gas and Electric Company (PG&E) provides electrical service to the Midtown Area. PG&E transmits electrical power through substations located at the southern end of the Midtown Area. The primary circuits are 21 kilovolts (kV) and mostly located underground. The existing substation capacity is adequate for the various estimated loads based on land usage.

Natural Gas

PG&E also provides natural gas service to the Midtown Area. Two 20-inch transmission lines within Capitol Expressway connect with eight-inch, six-inch, and smaller mains to provide natural gas to the area. The distribution to existing customers is via two-inch and 1.5-inch lines. Natural gas service can be provided to new land uses.

Telecommunications

American Telephone and Telegraph (AT&T) and Pacific Bell Corporation (Pac Bell) provide local telephone, cable TV and internet services to the Midtown Area via overhead and underground facilities.

5.11.2 THRESHOLDS OF SIGNIFICANCE

In accordance with CEQA Guidelines, a utility impact is considered significant if the Project will:

- Not have sufficient water supplies;
- Not have sufficient wastewater capacity.
- Require or result in the construction of new water or wastewater treatment facilities;
- Not be served by a landfill with sufficient permitted capacity;
- Not comply with federal, state, and local statutes and regulations related to solid waste?

5.11.3 PUBLIC UTILITIES IMPACTS

Water Service

Proposed Project Facilities

The proposed Project water facilities can be broken down into three components.

- In the podium residential area east of Abel Street, an 8" water line will connect to an existing 14" SCVWD water line along Abel near the northern property line. The proposed on-site 8" water line will loop around the two northern podium buildings and connect to a 14" SCVWD water line in Abel Street supplied with SCVWD water. The second on-site connection would be a connection to a the same 14" SCVWD water line in Abel Street mentioned above, and loop around the second building and connect to an existing 18" SFWD water line supplied with SCVWD water in Curtis Avenue.

- In the residential areas west of Abel Street and north of the Elmwood Rehabilitation Facility, each residential unit will connect to an 8" water line located in the interior north-south driveways. Each 8" water line will also loop around the southern end of the driveway circulation system. These 8" water lines will connect to a 12" water line located within the interior northern driveway. These 12" water lines will then connect to a 12" water line within the northern exterior roadway. The eastern end of this 12" water line will connect to an existing 14" SCVWD water line in Abel Street. The western end of this 8" water line will connect to a new 12" water line that will be constructed within the roadway of the western north-south road. The northern

end of this 8" water line with connect to an existing 16" water line located at the southern end of the existing industrial park to the north.

- In the commercial area located west of the existing Elmwood Rehabilitation Center and east of and parallel to Interstate 880, a new 128" water main will be constructed paralleling the existing north-south jail road and in the proposed cul-de-sac crossing the Hetch Hetchy parcel. This new 128" water line will connect to the existing 16" water main to the north and to the existing 142" City main in Great Mall Parkway

City development policies will require each developer within the Project Site to design and install all water mains in accordance with the City's Water Master Plan. In addition, eacj developer is required to pay all water related fees including connection fees and treatment plant fees. Developer may receive reimbursement for excess cost under certain circumstances.

Project Water Impacts

Using criteria established by the City's Water Master Plan, the proposed Project would generate total base water demand of approximately 205,000 gpd**.** This is 47,000 gallons per day above the water master plan BWF as shown in the table below.

Table 13
Additional Water Capacity Needs Above Master Plan Amounts

Land Use Code	Proposed BWF (gpd)	Master Plan BWF (gpd)	Additional BWF (gpd)
MFVH	79,704	91,600	(11,896)
MFH	98,040	59,700	38,340
CML	27,240	6,800	20,400
Total	204,984	158,100	46,884

Mitigation Measures UTL-1 and UTL-2, below, are added to the Project to address these sewage capacity impacts.

Recycled Water

There is an existing recycled water line within the County roadway immediately south of the Hetch Hetchy parcel. This line will be utilized to supply recycled water to the recreational area within the SFD/townhome project, the park within the Hetch Hetchy parcel and the park area that lies to the west of Abel Street and north of the Hetch Hetchy parcel. The recycled line runs eastward to Abel Street and turns south to Curtis Avenue. The proposed park located to the east of Abel Street will also be served by recycled water.

Sanitary Sewer

Proposed Project Facilities

The proposed Project sanitary sewer facilities can be broken down into three components.

- In the podium residential area east of Abel Street, two sanitary sewer connections are proposed. The first connection will be a 6" connection at the entrance between the two northern podium buildings out to Abel Street, connecting to an existing 15" sanitary sewer line. The second connection would be at Abel Street, which will also be a 6" connection to an existing 15" sanitary sewer line in Abel Street.

- In the residential areas west of Abel Street and north of the Elmwood Rehabilitation Facility, each residential unit will connect to a 6" sewer line located in the driveways that run north-south. These lines will connect to an 8" sanitary sewer line located within the interior northern driveway. This 8" sanitary sewer line will connect to an existing 15" sanitary sewer line located approximately 1400' west of Abel Street.

- In the commercial area located west of the existing Elmwood Rehabilitation Facility and east of and parallel to Interstate 880, new commercial development north of the Hetch Hetchy will construct a 68" sanitary sewer line to and within the north-south frontage road. This 68" sanitary sewer line will flow north and then east and connect to the existing 15" sanitary sewer line. Commercial development south of the Hetch Hetchy will construct a 68" sanitary sewer line to and within the north-south frontage road. This 68" sanitary sewer line will flow north and then east within the east-west road south of the Hetch Hetchy, and connect to the existing 15" sanitary sewer line. (note to author: the city minimum sewer diameter for commercial areas is 8")

Project Sewer Impacts

Total base wastewater flow (BWF) for the Project is approximately 176,000 gallons per day. This is 62,000 gallons per day above the sewer master plan BWF as shown in the table below.

Table 14
Additional Sewage Capacity Needs Above Master Plan Amounts

Land Use Code	Proposed BWF (gpd)	Master Plan BWF (gpd)	Additional BWF (gpd)
MFVH	76,590	86,500	(9,910)
MFH	89,460	24.900	64,560
CML	11,350	2,800	8,550
Total	176,400	114,200	62,200

Using criteria established by the City's Sewer Master Plan, the additional flows from the Project will generate impacts to sewer conveyance capacity, the Main Pump Station capacity and WPCP capacity.

Sewer Conveyance Capacity
The 15" sewer main within Abel Street currently flows at capacity. The sewer discharge from the Project will result in an impact to capacity requiring the construction of a sewer diversion on Curtis Avenue and an upsize the collection system from the Project Site northerly to the Main Sewage Pump Station, inclusive of the to the15" sewer pipe on Abel Street and Marilyn Dr. and the junction box at McCarthy Blvd. .

Main Pump Station Capacity
The City's Main Sewage Pump Station is currently operating at capacity or near capacity in dry weather do to the configuration of the system. The additional discharge from the Project will result in backup of flow onto the sewer collection system and potential significant overflow problems. The existing pump station is configured with a 10' diameter wetwell (reservoir) and has four pumps located around the perimeter. Due to the size limitations of the wet well, additional pumping capacity cannot be obtained by further increasing the size of the pumps nor by adding an additional pump. Reconstruction of the pump station will be required to accommodate increased the pumping capacity, required as a result of the Project.

WPCP Capacity
The Project will result in an impact and reduction in available capacity at the WPCP requiring purchase of additional sewerage discharge capacity for the BWF increase over the Master Plan.

Mitigation Measures UTL-3 and UTL-4, below, are added to the Project to address these sewage capacity impacts.

Solid Waste

As mentioned previously, the solid waste disposal needs of the Midtown Area would be accommodated for in the foreseeable future. The proposed General Plan and Specific Plan amendments would increase the amount of residential solid waste originally anticipated; however, the waste generated by the proposed Project will not result in a significant impact to the landfill.

Electricity, Gas, and Telephone

As noted above, there are adequate electricity, gas, and telephone services in the Project Area. Development associated with the Project will not significantly increase demand upon these facilities.

Summary of Utility Impacts

The Project is expected to exceed current City master-planned water and sewer capacity. Mitigation measures UTL-1 through UTL-4 are added to the Project to address these impacts.

5.11.4 MITIGATION MEASURES

Water

UTL-1. The developer shall design and install all water lines necessary to serve his development (including fire flow), sized in accordance with the City's Water Master Plan and guidelines.

UTL-2. The developer shall purchase adequate public system water capacities for the respective development including costs for capacity and storage needs above the master plan capacities, as determined by the City.

Sanitary Sewer

UTL-3. The developer shall design and construct all sanitary sewers and appurtenances, necessary to serve his development, sized to provide the additional capacity requirements of the development, and in accordance with the City's Sewer Master Plan, and City Engineering Standards and Guidelines.

UTL-4. The developer shall purchase adequate public system sewage capacities for the respective development. Fees shall consist of treatment plant fees up to the master plan levels, plus additional fees for costs of sewage collection, proportional replacement costs for a new Main sewage pump station and regional plant capacity needs above the master plan capacities, as determined by the City.

5.11.5 SIGNIFICANCE AFTER MITIGATION

Following implementation of Mitigation Measures UTL-1 through UTL-4, all impacts relative to public utilities are expected to be less than significant.

5.12 PUBLIC SERVICES

This section addresses potential impacts regarding fire, police, school, park and library services in the Project area. Existing conditions, potential impacts and mitigation measures for each service is discussed. Primary information for this Section was obtained from the respective public service agencies.

5.12.1 EXISTING CONDITIONS

Fire Service

The Milpitas Fire Department provides fire protection and suppression to the City, inclusive of the Project area. The Department is also responsible for emergency medical services, rescue services, hazardous and toxic materials emergency response, coordination of City-wide disaster response efforts, enforcement of State and local hazardous material, urban runoff, fire and life safety codes and regulations, and investigation of fire, arson and other emergency events for cause and origin.

The Project Site is served by Station No. 1, located adjacent to the eastern parcel. Fire Station No. 1 is located at 25 West Curtis and the Fire Department's headquarters is located at 777 South Main Street. Station No.1 is typically staffed with one battalion commander and six firefighters. The station is equipped with one engine and one ladder truck.

The emergency response time goal of the Fire Department is to deploy one engine to the scene of an emergency within four minutes. The Department's average response time to all calls is currently meeting the four minute response time goal. Because Station No. 1 is within the Midtown Area, the fire call response time is approximately one to two minutes. The City also receives mutual fire aid from other municipalities under the Santa Clara County Mutual Aid Plan and California Master Mutual Fire Aid Plan for Local Resources. The San José Fire Department and/or the Fremont Fire Department also provide "on request" resources for mutual aid to Milpitas in emergencies.

Police Service

Police protection services are provided to the Project Site by the City of Milpitas Police Department. Services are provided from one central station, located at 1275 North Milpitas Boulevard. The Department employs 94 sworn officers and operates 26 marked patrol cars.

Police protection in the City is allocated based on "Beat" (or patrol area). The Project Site is within Beat 1, which is continuously staffed by one patrol officer.

The average police response time for the City is approximately four minutes and 40 seconds. Highest priority is assigned to emergency calls where life-threatening conditions occur. The target response time to such emergency calls is three minutes. Currently, the average police response time for non-emergency calls within the City is estimated to be approximately five minutes.

According to the Milpitas Midtown Specific Plan, new residential development promulgated as part of the Specific Plan will result in 13,100 new residents. To serve these new residents, the Specific Plan EIR estimates that the Police Department will need 20 additional officers.

3. Schools

The Project Site is located within the Milpitas Unified School District (MUSD). The district serves 9,368 students in grades kindergarten through 12, with nine elementary schools, two middle schools, and two high schools. [15] According to the General Plan, MUSD would be able to accommodate additional enrollment from General Plan buildout.

The nearest elementary school is Zanker (Pearl) Elementary School, located at 1585 Fallen Leaf Street, approximately 0.8 miles south of the Project Site. The nearest middle school is Rancho Middle School, located at 1915 Yellowstone Avenue, approximately 1.9 miles east of the Project Site. The nearest high school is Milpitas High School, located at 1285 Escuela Parkway, approximately 2.5 miles northeast of the Project Site.

4. Parks and Recreation

The City completed a *Park and Recreation Facility Needs Study* in April 1993. The study identified a need for a new community park, group picnic facilities, classroom/meeting space, sports practice facilities, trails, a performing/visual arts center, an historical museum and a gymnasium.

The City of Milpitas provides 153.4 acres of City-owned park and recreation facilities and 1,544 acres of regional park at the Ed Levin Park. Table 15 shows the inventory of park acreage by type and facility. The nearest park to the Project Site is Pinewood Park, located on Starlite Drive and Lonetree Court, approximately 0.5 miles south of the Project Site. Pinewood Park is an eight acre park with four tennis courts, two barbeque pits, four tables, a basketball hoop, and a tot lot.[16]

[15] Milpitas Unified School District. Index of Schools. February 2002. 18 March 2004. http://www.musd.org/dept/musd_schools.html.

[16] City of Milpitas. Welcome to City of Milpitas Parks and Rental Facilities. 2004. 18 March 2004. http://www.ci.milpitas.ca.gov/citydept/planning/recreation/parkfacilityreservation.htm#map.

TABLE 15: INVENTORY OF PARK ACREAGE BY TYPE AND FACILITY	
Type/Name	*Acreage*
REGIONAL PARK	
Ed Levin Park	1,544
Alum Rock Park*	775
Sunnyvale – Santa Clara Baylands Park*	280
Mission Peak regional Preserve*	1,875
S.F. Bay National Wildlife Refuge	19,600
Total Regional	**24,075**
COMMUNITY PARK	
Sport Center	24.4
Community Park Total	**24.4**
NEIGHBORHOOD PARKS	
Creighton Park	5.0
Foothill Park	4.0
Hillcrest Park	5.2
Sandalwood Park	3.5
Sinnot Park	4.7
Starlite Park	4.0
Strickroth Park	5.7
Al Augustine Park	6.0
Walter Reuther Park	5.2
Neighborhood Park Total	**43.3**
NEIGHBORHOOD PARKS WITH COMMUNITY FACILITIES	
Ben Rodgers Park	9.5
Cardoza Park	10.0
Dixon Landing Park	11.0
Gill Park	8.5
Hall Park & Lagoon	9.5
Higuera Adobe Park	5.5
Murphy Park	8.7
Pinewood Park	8.0
Yellowstone Park	4.0

Neighborhood with Facilities Total	**74.7**
SPECIAL USE PARKS	
Mini Parks	3.2
Flood retention area/Hidden Lake Park/Hall Park Drainage	2.5
Community Garden	1.2
Senior Center	0.1
Rancho Milpitas Middle School ballfield	1.0
Community Center/Civic Center	3.0
Special Use Parks Total	**13.0**
Total City Park Acreage	**153.4**

*Regional Parks outside the Planning Area serving City residents.
Source: City of Milpitas, 1994

Library Service

The Santa Clara County Library System consists of eight libraries and one branch library. The Project Site is served by the Milpitas Library, located at 40 North Milpitas Boulevard. Milpitas library provides programs and services for adults, teens, and children, an online public access catalog, CD-ROM and online data bases, Internet access, over 200,000 volumes, audio and video cassettes, and magazines.

The Milpitas Library has approximately 50,000 visitors per month and circulates approximately 116,000 items a month. The City completed a *Library Needs Assessment* in June 2002. The assessment reviewed the use of the existing facilities, benchmark library size, staffing, and operations with comparable libraries, and assessed the community's library needs. The assessment compared the Milpitas Library with nine libraries (neighboring libraries, libraries that shared the same regional area and economy, libraries within the same system as Milpitas, large independent libraries, and/or libraries that were part of a larger public library system).

In the analysis, Milpitas Library's square footage per capita was compared with that of the nine other libraries. At 0.3 square foot per capita, Milpitas Library is 46 percent below the benchmark average of 0.55 square foot per capita. Milpitas Library's collection of materials, which includes books, reference materials, audio and visual, and periodicals is 3.24 items per capita. Milpitas Library's items per capita is seven percent lower than the benchmark average of 3.48. Books and reference materials account for 82 percent of Milpitas Library's total collection, compared to the benchmark average of 94 percent. In comparison to the other libraries analyzed in this study, Milpitas Library is deficient in areas such as square footage and collection size.

The City of Milpitas has plans to move the existing library and locate in a new, larger library at the historic Milpitas Grammar School site, located at 160 North Main Street.

5.12.2 THRESHOLD FOR DETERMINING SEGNIFICANCE

In accordance with CEQA Guidelines, significant impacts relative to public services are adverse physical impacts associated with the provision of new or physically altered governmental facilities that are needed to maintain acceptable service ratios, response times, or other performance objectives.

5.12.3 PROJECT IMPACTS

Fire Service

The Project proposes an amendment to the Milpitas General Plan and Midtown Specific Plan that would increase residential development by 430 dwelling units, adding an estimated 1,492 residents to the 13,100 already projected by the Specific Plan[17]. As such, the proposed Project would result in an incremental increase in demand for fire protection, as a result of increased use of the site. As mentioned above, Station No. 1 is adjacent to the Project's eastern parcel, therefore, the response time to the Project Site would be well within the Fire Department's goal of four minutes. However, the Project design constraints will produce narrower street widths and tighter turning radii, which are incompatible with performance specifications of the Fire Department's current ladder truck and engines resulting in a significant impact.

Although the proposed Project would increase the demand of fire services, it will not significantly impact acceptable fire safety service response times. However, by increasing the number of residents in the fire safety service area, the Project will generate the need for new fire apparatus, and therefore, could result in a significant impact. The City is currently studying the specific public services demands, including those related to fire safety, that will be required to serve the residential component of the Project. This study will compare the cost of meeting those demands with the expected revenues to be generated by the Project. Mitigation Measure PS-1 is added to the Project to require the development to contribute its fair share to needed services. This mitigation is expected to reduce Project impacts relative to fire protection to less than significant levels.

Police Service

As noted above, Midtown Specific Plan estimated that the Police Department will need 20 additional officers to serve the expected 13,100 new residents in the Midtown Area. By proposing to amend the General Plan and Specific Plan and add 1,492 additional new residents, the Project would generate the need for one more officer, increasing the number of officers needed for Specific Plan buildout to 21. Additional police apparatus may also be needed. The Project demand for an additional officer and associated apparatus could result

[17] 430 dwelling units x 3.47 persons per unit = 1,492 new residents

in a significant impact. As mentioned above, the City is currently studying the specific public services demands, including those related to police protection, that will be required to serve the residential component of the Project. Mitigation Measure PS-1 is added to the Project to require the development contributes its fair share to needed services. This mitigation is expected to reduce Project impacts relative to police servies to less than significant levels.

School

Table 16 shows the MUSD's capacity, current enrollment, additional enrollment generated from planned Midtown Specific Plan development, and ability to accommodate students generated by the Project's proposed General Plan and Specific Plan amendments.

TABLE 16: MILPITAS UNIFIED SCHOOL DISTRICT: CAPACITY, ENROLLMENT, ADDITIONAL ENROLLMENT FROM SPECIFIC PLAN BUILDOUT, ABILITY TO ACCOMMODATE ADDITIONAL STUDENTS RESULTING FROM THE PROPOSED PROJECT

Grades	Capacity	Current 2004 Enrollment	Additional Enrollment from Specific Plan Buildout	Additional Students Generated from Project	Total Enrollment with Project	Adequate MUSD Capacity (?)
K-6	6,000	5,066	+ 181	+ 61	= 5,308	Yes
7-8	1,700	1,492	+ 45	+ 16	= 1,553	Yes
9-12	3,200	2,810	+ 83	+ 31	= 2,924	Yes
Total	10,700	9,368	+ 309	+ 108	= 9,785	Yes

* The students generated from the proposed amendments are based on the MUSD's student generation rate of 0.25 students per multifamily dwelling unit and are broken down by grade in proportion to the current enrollment.
Sources: City of Milpitas. General Plan. 1994.
Stanojevic, Nawal. "Re: Capacity and Enrollment for Milpitas Unified School District." E-mail to MUSD. 16 March 2004.

As depicted in Table 16, MUSD schools currently operates below capacity. There is sufficient surplus capacity to accommodate students at Specific Plan buildout as well as the additional students generated from the proposed Project General Plan and Specific Plan amendments.

The local schools that would serve the Project Site are Zanker (Pearl) Elementary, Rancho Middle School and Milpitas High School. Table 17, below, summarizes current capacity and enrollment at these local schools. As indicated in Table 17, Zanker Elementary is near capacity. However, whether or not this elementary school would be able to accommodate future Project residents will depend on shifting class sizes and MUSD methods for establishing school attendance area boundaries.

TABLE 17: LOCAL SCHOOLS IN PROJECT AREA, THEIR CAPACITY AND CURRENT ENROLLMENT		
Local School	**Local School Capacity**	**2004 Enrollment**
Zanker (Pearl) Elementary School	450	425
Rancho Middle School	780	704
Milpitas High School	3,000	2,629

California law allows the governing body of a school district to impose a fee on all new development within the district's jurisdiction for the purpose of funding the construction or reconstruction of school facilities. These fees are intended to mitigate the school cost associated with new development. Currently, MUSD collects school impact fees for new development to the maximum extent allowable under State law.

The Project is not expected to adversely affect school facilities or service ratios or other performance objectives.

Parks

The Midtown Area, where higher density residential development is proposed, is required to provide public parkland at a ratio of 3.5 acres per 1,000 residents. Up to 1.5 acres per 1,000 residents can be developed as usable on-site common or private open space within new residential developments. The remaining two acres per 1,000 must be developed as public parkland.

Based on City calculations for parkland, , the Project would require 7.7 acres of parks/open space. Of this requirement, the Project must provide at least 4 acres of public parkland, and may provide up to 3.3 acres of usable on-site common or private open space.

The Project includes both private and public open space and park elements. It proposes 6 acres of public park and trails, 2.4 acres of private usable open space, and 6 acres of common landscaped open space. (Reference Table 1, Elmwood Residential and Commercial Development Land Use Summary.) In total, the Project would provide 14.4 acres of public park, usable private open, and common open space area. These acreages exceed the minimum requirements established by the City's Midtown policies. The Project is not expected to adversely affect park facilities or service ratios.

However, the Project does not currently include a mechanism for funding maintenance of the new pubic park and landscaped areas (such as public parkways) it proposes to construct. Lack of adequate maintenance could result in significant impacts to public park and landscaped facilities. As noted above, the City is currently studying the specific public services demands, including those related to maintenance of public park and landscaping, that will be required to serve the residential component of the Project. Mitigation Measure PS-1 is added to the Project to require the development contributes its fair share to needed services. This mitigation is expected to reduce Project impacts relative to park services to less than significant levels.

Library

As discussed above, the Milpitas Library is currently deficient in areas such as square footage and collection size. The City plans to move the library to a new, larger library at the historic Milpitas Grammar School. Although the proposed Project is expected to create an incremental demand for increased library services Although the proposed Project is expected create an incremental demand for increased library services, it is not expected to significantly impact acceptable library service ratios and will not require the development of new library facilities. Therefore, the Project will not result in a significant impact to library services.

Summary Impacts to Public Services

By increasing the population of the Midtown area, the Project could result in demand for additional fire protection and police protection apparatus, and increased demand for maintenance of public park and landscaped areas. Mitigation Measure PS-1, below, is expected to reduce these potential impacts to less than signficiant levels.

5.12.4 MITIGATION MEASURES

PS-1: The developer shall contribute a fair share portion to cover the costs associated with fire, police and/or park/landscape maintenance needed to serve the Elmwood residential development. This fair share shall be determined by a study conducted by the City, and may require developer participation in a Lighting and Landscape District, Lighting and Storm Drain Districts, and/or Community Facility District.

5.12.5 SIGNIFICANCE AFTER MITIGATION

Following implementation of Mitigation Measure PS-1, all impacts relative to public serviesutilities are expected to be less than significant.

6.0 LONG-TERM IMPACTS SUMMARY

This Section summarizes long-term implications of the Project should it be implemented. Specifically, this Section discusses expected Project growth-inducing impacts, cumulative impacts, significant environmental impacts that cannot be avoided, and the significant irreversible environmental changes that would be caused by the proposed Project.

6.1 GROWTH-INDUCING IMPACTS

Pursuant to Section 15126.2 (d) of the CEQA Guidelines, growth-inducing impacts are the ways in which a proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are both direct and indirect growth-inducing impacts. Direct growth-inducing impacts occur when a project would remove obstacles to population growth. (A major expansion of a wastewater treatment plant or a new road into an undeveloped area might, for example, increase economic or population growth). These types of growth-inducing projects may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Indirect growth-inducing impacts occur when a project encourages or facilitates other activities that could cause significant environmental effects. (A new residential subdivision in a previously undeveloped area might, for example, generate the need for new commercial development and subsequently new roads.)

The Elmwood Residential and Commercial Development proposes amendments to the Specific Plan, General Plan and Zoning Map to change the land use designation of an approximately 21.48 acre parcel from General Commercial and Parks and Recreation to Multifamily High Density Residential. These proposed amendments would modify the proportion of residential to commercial uses on the site, but would not change the overall type, density or character of land uses anticipated by the Specific Plan. As discussed in Section 5.1.3 of this DEIR, the Project, inclusive of the proposed land use amendments, is found to be consistent with the policies of the Milpitas Midtown Specific Plan, as well as the City General Plan and Zoning Code.

The Project will develop on surplus County property, already designated for a mix of urban land uses and surrounded by a mix of urban land uses. As such it can be classed as an urban infill project. The Project will connect to existing infrastructure systems located within and adjacent to the site, including roads, water, storm drain and wastewater systems. It will not remove obstacles to population growth or directly or indirectly induce additional growth.

6.2 CUMULATIVE IMPACTS

In accordance with Section 15355 of the CEQA Guidelines, this section summarizes nearby proposed projects that could, together with the Project, cause cumulative environmental impacts. "Cumulative impacts" refers to two or more individual effects that, when considered together, compound or increase other environmental impacts. Planned developments in the vicinity of the Project Site contribute to the cumulative impacts of the proposed Elmwood Residential and Commercial Development Project. Developments that have been recently approved or have active applications before the City include the following:

1. Apton Plaza: 230 N. Main Street – 96 residential units and 3,000 s.f. of retail
2. Town Center: N.E. corner of Milpitas and Calaveras Boulevard – 65 townhomes and redevelopment of approx. 75,000 s.f. of retail
3. South Main Manor: East side of Main and Serra Street – 13 residential units
4. Parc Place: 95 E. Curtis Avenue – 285 residential units
5. USA Properties: N.E. corner of Montague and Main – 120 senior housing units and 120 residential units
6. Calaveras Center: 750 E. Calaveras Blvd – 16,000 s.f. of office and restaurant
7. 790 E. Capitol Avenue: 790 E. Capitol Avenue – 13,000 s.f. of office and retail.

Because of their proximity to the Project Site, these projects could, together with the Project, cause a significant cumulative impact. Specifically, cumulative impacts related to traffic, air quality, biological resources, cultural resources, public services and utilities could occur. Each of the above listed projects is proposed in compliance with the Midtown Specific Plan and City General Plan.

Analyses conducted for the Elmwood Residential and Commercial Project considered, where applicable, cumulative impacts that could occur based on planned growth promulgated through the Specific Plan and General Plan. Based on these analyses, potentially significant cumulative traffic and air quality impacts were identified.

Cumulative Traffic Impacts

As discussed in Section 5.2.3 of the DEIR, cumulative traffic impacts of the Project were measured by adding Project traffic to the City's 2015 traffic model which includes land use

forecasts based on the City's General Plan and land use assumptions published for Santa Clara County by the Association of Bay Area Governments (ABAG) projections. Proposed Project changes to the General Plan designations for the site were included in the assessment of cumulative impacts. In addition, the assessment assumed planned transportation improvements would be constructed, including:

- I-880 widening Projects – I-880 will be widened to include a high occupancy vehicle lane and auxiliary lane in each direction from Montague Expressway north into Alameda County.

- Fremont Boulevard Extension to Dixon Landing Road– Fremont Boulevard will be extended southward from its current terminus near Lakeview Drive to Dixon Landing Road. The Fremont Boulevard extension will include two lanes in each direction and will form the forth leg of the McCarthy Boulevard/Dixon Landing Road intersection.

This cumulative analysis found that by proposing to increase the proportion of residential to commercial uses on site, the Project would decrease expected daily traffic by 8,514 trips, decrease PM peak hour traffic by 612 trips, and increase AM peak hour traffic by 99 trips. The cumulative effect of these changes would improve traffic conditions (have a beneficial impact) on the following road segments:

- Great Mall Parkway, I-880 to Main, westbound, AM
- Main Street, Carlo to Curtis, southbound, AM
- Calaveras Boulevard, Abel to Milpitas, eastbound, PM
- Calaveras Boulevard, Hill view to I-680, eastbound, PM
- Main Street, Curtis to Carlo, northbound, PM

However, the cumulative effect would increase traffic (have an adverse impact) on the following segment:

- Tasman Drive, McCarthy to I-880, westbound, AM

Although mitigation is added to the Project to reduce overall traffic impacts of the Project, no mitigation measure for the cumulative traffic increase on Tasman Drive (McCarthy to I-880, westbound, AM) is considered feasible. For this reason, this cumulative traffic impact is considered significant and unavoidable.

Cumulative Air Quality Impacts

As discussed in Section 5.3.3 of this DEIR, vehicle trips generated by the Project would result in air pollutant emissions affecting the entire San Francisco Bay Air Basin. The Air Quality Study calculated regional emissions associated with Project traffic, using the URBEMIS2002 emission model. Regionally, the Project would exceed BAAQMD established thresholds of significance for ozone precursors and PM_{10} of 80 pounds per day. The Project would therefore have a significant cumulative effect on regional air quality.

Similar regional air quality impacts were identified through the Midtown Specific Plan EIR process. To address these impacts, the Midtown Specific Plan EIR recommended that all future development in the Midtown Area comply with Specific Plan policies that encourage a compatible mixture of land uses, provide for a land-use mix that supports major transit facilities, locate higher density development around hubs and commercial centers, provide for the continuation of pedestrian-oriented retail development, and provide pedestrian connections between the transit stations and important destinations. However, according to that EIR, these measures offer only partial mitigation. Consequently, the Midtown Specific Plan EIR found that cumulative air quality impacts in the Midtown Area, inclusive of the Project Site, would be significant and unavoidable, and a Statement of Overriding Considerations was subsequently adopted by the City for these impacts.

The Project is consistent with the above stated Specific Plan policies. It provides for a mix of residential, park and commercial land uses; it is located approximately one-half mile from the Tasman east light rail station at the Great Mall of the Bay Area. It would decrease expected daily traffic by 8,514 trips. Through its mix of land uses and design, the Project serves to mitigate cumulative regional air quality impacts.

However, even having incorporated these measures into the project, and similar to the findings of the Specific Plan EIR, this mitigation is only partial, and the project would contribute to significant unavoidable cumulative impacts to regional air quality.

Summary of Potential Cumulative Impacts

The Project would contribute to cumulative traffic impacts at Tasman Drive (McCarthy to I-880, westbound, AM), and cumulative air quality impacts related to regional levels of vehicular air pollutant emissions.

This DEIR also finds that the Project could have potentially significant impacts related to: noise; biological resources; geology and soils; flooding, drainage, water quality; cultural resources; hazardous materials, utilities and public services. For each potential Project impact identified, a mitigation measure is added to the Project expected to reduce the impact to less than significant levels. No other potentially significant cumulative impacts are associated with the Project.

6.3 SIGNIFICANT ENVIRONMENTAL IMPACTS THAT CANNOT BE AVOIDED

Significant environmental impacts that cannot be avoided include any significant impacts, including those which can be mitigated but not reduced to a level of insignificance.

The analyses presented in Section 5.0 find that the Project will result in significant adverse impacts relative to the following environmental topics:

1. Traffic: related to eight roadway intersections, two freeway segments, and cumulative impacts to one roadway segment.

2. Air Quality: related to construction dust and cumulative impacts based on regional air pollutant levels.

3. Noise: related to roadway noise impacts on Project residents; parking noise impacts at the Correctional Facility on Project residents; Project construction noise impacts on adjacent residents.

4. Biological Resources: related to special status plants; special status fish species; nesting raptor and migratory birds; burrowing owls; degradation of Penitencia Creek; disturbance of the detention/settling basin and isolated wetland.

5. Geology: related to ground shaking, expansive soils and liquefaction.

6. Flooding, Drainage, Water Quality: related to proper implementation of flood control, drainage and water quality control measures.

7. Cultural Resource: related to archaeological resources and burial sites.

8. Hazards: related to potential ACMs and lead-based paint; and PCBs in or near two ground mounted electrical transformers.

9. Public Utilities: related to water and sanitary sewer capacity.

10. Public Services: related to the delivery of public services, specifically, police, fire, parks maintenance.

For each of these above identified significant adverse impacts, the EIR recommends mitigation that is expected to reduce impacts to less than significant levels, with the following exceptions.

Traffic Impacts Not Fully Mitigated

- Six roadway intersections
    1. I-880 Northbound Off-ramp and Great Mall Parkway
    2. South Abel Street and Great Mall Parkway
    3. I-880 Southbound Off-ramp and Tasman Drive
    4. Calaveras Boulevard and Milpitas Boulevard
    5. Alder Drive and Tasman Drive
    6. Great Mall Parkway/East Capitol Avenue and Montague Expressway

- Two freeway segments

    1. I-880, Tasman Drive to Montague Expressway - Northbound (PM peak hour)
    2. I-880, Brokaw Road to Montague Expressway - Southbound (PM peak hour)

- One cumulative roadway intersection impact

    1. Tasman Drive, McCarthy to I-880, westbound, AM

Air Quality Impacts Not Fully Mitigated

- Construction dust impacts

- Cumulative air quality impacts related to regional levels of vehicular air pollutant emissions.

Because these above-listed traffic and air quality impacts cannot be mitigated to less than significant levels, these impacts remain significant and unavoidable. With identification of these significant unavoidable impacts, any Project approval must be supported by a Statement of Overriding Considerations pursuant to Section 15093 of the CEQA Guidelines.

6.4 SIGNIFICANT IRREVESABLE ENVIRONMENTAL CHANGES

Significant irreversible environmental changes that would be caused by a proposed project should it be implemented are defined by Section 15126.2 (c) of the CEQA Guidelines. These changes include large commitments of nonrenewable resources, which because of the size and duration of use of such resources makes removal or nonuse thereafter unlikely. Types of projects that might use large commitments of nonrenewable resources are new large-scale mining operations or highway improvements through previously undeveloped land. This CEQA Guideline definition also includes irreversible damage that could result from environmental accidents associated with a project.

The proposed Elmwood Residential and Commercial Development Project will place up to 683 homes, 180,000 square feet of commercial and about 14 acres of varied park and open space land uses on a currently undeveloped property designated by the City Specific Plan for a mix of residential, commercial and park/open space land uses. The Project will not commit large quantities of nonrenewable resources. It will not involve the use of potentially hazardous materials that could result in environmental accidents and irreversible damage.

7.0 ALTERNATIVES TO THE PROJECT

This Section is prepared pursuant to CEQA Guidelines, Section 15126, which specifies that an EIR shall describe reasonable alternatives to the project, or to the location of the project, which could feasibly attain most of the objectives of the project, and could avoid or substantially lessen one or more of the significant effects of the project. The discussion should allow meaningful evaluation, analysis and comparison of the alternatives with the proposed project. Among the factors that may be taken into account when assessing the feasibility of project alternatives are site suitability, land use consistency and economic viability.

7.1 ALTERNATIVES NOT CONSIDERED

Shopping Center Alternative

An alternative considered by the City and subsequently dismissed proposed substituting the proposed 180,000 square feet of auto mall use for 240,000 square feet of shopping center space. All other aspects of the Project development would remain the same. However, traffic and air quality assessments of the shopping center alternative found that it would result in higher traffic volumes and air quality pollutant emissions than the proposed Project. Consequently, this DEIR provides no further consideration of this alternative.

General Plan Alternative

A General Plan alternative also is not considered. A General Plan alternative would assess potential impacts if the Project Site were to be developed in accordance with currently designated General Plan/Specific Plan land use. As discussed throughout this DEIR, the Project's proposed General Plan/Specific Plan amendments would increase the proportion of residential to commercial development, which would decrease expected daily traffic from that anticipated by the General Plan by 8,514 trips. Additionally, the Project would reduce cumulative traffic impacts on 5 City road segments, identified in Section 6.2, above.

Because a General Plan alternative would generate more traffic than the proposed Project, it would also generate more traffic related air quality and noise impacts. A General Plan alternative would encompass the same development area as proposed by the Project. Consequently, the alternative would not be expected to reduce Project development related impacts, including those associated with biological resources, geology and soils, flooding, drainage, water quality, and cultural resources. A General Plan alternative would, therefore, not avoid or substantially lessen one or more of the significant effects of the Project. Pursuant to CEQA Guidelines, Section 15126, it would not be a reasonable alternative.

Alternative Location

An alternative location scenario also is not considered in this the DEIR. The Project involves the reuse of surplus lands of the County of Santa Clara that surround and are currently part of the Elmwood Correctional Facility. KB Home and the County of Santa Clara are joint applicants on the Project. They share the basic objective to develop the surplus lands with residential and commercial land uses. Because the basic objective of the Project is development of these surplus County lands, an alternative location scenario is not considered relevant, and is therefore not included in the alternatives analysis.

7.2 ALTERNATIVES CONSIDERED

Consistent with CEQA Guidelines, two alternative to the Project are considered. These are: (1) No-Project alternative; and (2) Reduced Residential Density Alternative. These alternatives and their expected impacts are discussed below:

No-Project Alternative:

Under the No Project Alternative, no new development would occur on the Project Site. It would remain surplus land and part of the Elmwood Correctional Facility site. With no development, impacts related to the site's development would not occur, including impacts associated with the following criteria: traffic; air quality; noise; geology and soils; flooding, drainage, water quality; biological resources; and cultural resources.

Although the Project is expected to result in fewer development related impacts than the proposed Project, it would allow existing site hazards to remain. As discussed in Section 5.7.2 of this DEIR, there is existing flooding deficiencies within Lower Penitencia Creek. Between the northern Project Site boundary and the existing northern Correctional Facility entrance bridge, the Lower Penitencia Creek west levee system does not meet Santa Clara Valley Water District (SCVWD) or FEMA freeboard standards, and consequently does not provide adequate flood protection; it would allow the 100 cfs of flood water to fill the portion of the Project Site, west of Abel Street.

As discussed in Section 5.9.2 of this DEIR, the existing golf facility structures on site may contain ACMs, lead-based paint, and other potentially hazardous materials or waste. There

are also two ground mounted electrical transformers on site that may contain PCBs. Mitigation measures are added to the Project to reduce these existing site hazards to less than significant levels. However, under the No-Project Alternative, these existing hazards would remain.

The No-Project Alternative also would be inconsistent with the Midtown Specific Plan policies that designate the site for future development. Table 18, below, lists the Specific Plan policies relevant to the Project Site, then compares the No-Project Alternative compliance to the Project.

Table 18

Comparison of Alternatives Compliance to Relevant Milpitas Midtown Specific Plan Land Use Policies

Policies	Proposed Project Response	Compliance		
		Project	No-Project	Reduced Density
3.2 - Provide for higher density residential development with the TOD (Transit Oriented Development) overlay zone and around Great Mall Parkway.	The Project proposes affordable high density podium condos in the TOD.	Yes	No	-No
3.6 - Affordable housing units should be provided with new housing developments.	The Project provides 110 units of affordable housing as part of the development, and a 98 affordable senior housing project off-site.	Yes	No	No
3.7 - Integrate affordable units within market-rate developments.	The Project provides 110 units of affordable housing as part of the development.	Yes	No	No
3.21 - Designate surplus land adjacent to the Elmwood Rehabilitation Center for general commercial uses.	The Project proposes to designate 23.5 acres as general commercial consistent with the Specific Plan definition.	Yes	No	No
3.23 - Require public parks and open space as conceptually located in the Specific Plan.	The Project provides public parks and open space conceptually consistent with the	Yes	No	Yes

	Specific Plan.			
3.24 - Require new residential development to provide public parks at a ration of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.	The Project provides 14.4 acres of public park, usable private open, and common open space area, which exceed the Specific Plan requirements (reference Section 5.12 of this DEIR.)	Yes	No	Yes
3.25 - Credit improved linear parks on property owned by public and quasi-public agencies (e.g. Santa Clara Valley Flood Control District) as public parks.	The Project proposes to improve the Hetch Hetchy right-of-way with a linear park and trail.	Yes	No	Yes
3.28 - Establish a minimum 2-acre park in association with the O'Toole Elm alley	The Project proposes Elmwood Park, consisting of at least 2 acres and planting replacement trees to recall the O'Toole Elms.	Yes	No	Yes
3.29 - Designate the Hetch Hetchy right-of-way in the Midtown Area park and recreation.	The Project proposes to improve the Hetch Hetchy right-of-way with park and trail.	Yes	No	Yes
3.30 - Encourage a 10-acre site to be developed as a park and recreation, located adjacent to Penitencia Creek.	The Project proposes 14.4 acres of public park, usable private open, and common open space area, which complies with the intent of this policy.	Yes	No	Yes

Finally, the No-Project alternative would not achieve the basic Project objective to develop the County surplus lands community supportive and revenue generating land uses . Although this alternative would result in fewer development related impacts than the Project, potential public nuisance issues could arise by allowing existing site hazards to remain., It would conflict with Specific Plan policies that designate the site for development. The No-Project Alternative would not be superior to the Project.

Reduced Residential Density Alternative

Under the Reduced Residential Density Alternative, the entire 28.9 acre residential portion of the Project would be developed as single family attached dwellings with a medium-low density of 12 units per acre. As proposed, the Project would provide 683 dwelling units at an average overall density of 24.1 dwelling units per acre. At the reduced density of 12 dwelling units per acre, the Project Site would support 339 dwelling units, approximately half the amount of the Project.

By reducing the number of dwelling units roughly in half, the Reduced Density Alternative would result in about half the amount of residential traffic. This Alternative is expected to alleviate a significant and unavoidable impact associated with cumulative traffic increase on Tasman Drive (McCarthy to I-880, westbound, AM).

Because the Reduced Density Alternative would generate less traffic than the proposed Project, it would also generate less traffic related air quality and noise impacts. This Alternative would encompass the same development area as proposed by the Project. Consequently, the alternative would have similar development driven impacts as the Project, including those associated with biological resources, geology and soils, flooding, drainage, water quality, and cultural resources.

Table 18, above, evaluates how this Alternative would meet the Specific Plan policies relevant to the Project Site. As indicated in the Table, this Alternative would meet Specific Plan policies related to development of the surplus property and the creation of park and open space areas. However, it would not meet the policies related to the provision of high density and affordable housing, and would be an inefficient use of vacant infill land.

In terms of meeting the Project objective, this Alternative would allow development of the surplus lands with community supporting and revenue generating land uses. However, it would not meet the Project objectives to provide affordable housing on site. Although this Alternative would alleviate the one significant unavoidable impact associated with the Project, it would conflict with certain Specific Plan policies and only meet part of the Project objectives. However, as described below, the Reduced Density Alternative would be superior to the Project.

7.3 ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Although the Reduced Density alternative does not meet the certain Specific Plan policies and Project objectives, it is by default identified as the Environmentally Superior Project, because it would avoid one of the Project's unavoidable impacts (cumulative traffic increase on Tasman Drive)

8.0 INFORMATION SOURCES

8.1 BIBLIOGRAPHY

- *City of Milpitas Midtown Specific Plan* (March 19, 2001).
- *City of Milpitas Midtown Specific Plan Draft Environmental Impact Report* (SCH# 2000092027) (October 2001) and Final EIR (January 2002)
- *City of Milpitas General Plan* (December 20, 1994, and as amended)
- *CEQA Implementing Procedures*, City of of Milpitas (current)
- *Elmwood Residential & Commercial – Transportation Impact Analysis*, Hexagon Transportation Consultants, Inc. in August 2004.
- *Elmwood Development / Lower Penitencia Creek Floodplain Impact*, Schaaf and Wheeler, dated June 8, 2004.
- *Geotechnical Investigation on Proposed Residential Development, Elmwood Property*, Terrasearch Inc.(September 2003)
- *Soil Assessment at Elmwood Site*, Aqua Science Engineers, Inc. (September 2003)
- *Phase I Environmental Site Assessment (ESA) at Elmwood Site,* URS Corporation (August 2002)
- *Archaeological Subsurface Testing for Elmwood Surplus Properties*, William Self Associates, Inc. (September 2003 and February 2004)
- *Archaeological Resources Assessment and Field Reconnaissance for Elmwood Surplus Properties*, Holman & Associates (June 2002)

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